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In the Supreme Court of the United States

OCTOBER TERM, 1991

UNITED STATES OF AMERICA, PETITIONER

v.

RAY MABUS, ET AL.

JAKE AYERS, JR. ET AL., PETITIONER

v.

RAY MABUS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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CERTIORARI GRANTED APRIL 15, 1991

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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11. District Court judgment of December 10, 1987 (Record volume 6, document 1654) 1885
12. Order granting certiorari in No. 90-1205, April 15, 1991 1887
13. Order granting certiorari in No. 90-6588, April 15, 1991 1888

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TESTIMONY OF STACEY L. BRACEY

[2789] THE WITNESS: My name is Stacey Louise Bracey. Last name B-as-in-boy R A C E Y.

* * * * *

[2790] Q. For the record, would you state your race, please?

A. Excuse me?

Q. Would you state your race?

A. Negro.

Q. Okay.

A. Afro-American.

Q. Are you a student at the University of Mississippi?

A. Yes, I am currently.

Q. And when did you enter the University of Mississippi?

A. The spring of 1983.

Q. What year are you?

A. I'm a senior.

Q. Okay. What is your major?

A. I'm a double major, computer science and English.

* * * * *

[2793] A. Has the BSU sponsored any candidates for election to the student government since you've been a student at the University of Mississippi?

A. Yes, this spring the Black Student Union endorsed s slate, an entire slate of ABS candidates, all of which were white. No black students were running in the ASB government at this point of time. This was the first time this has ever been done by the Black Student Union and because of some of the things that we put into the information sheet, is what we called it, which stated a couple of sentences as to whether the cabdidate had or had not been instrumental in helping the Black Student Union. We chose who we felt were working in the best interests of black students and

there was a lot of problems from that. There was a lot of backlash from that. There were threats to both myself and Phyllis Keyes, who was the President of the BSU at that point in time. There were a lot of negative tones thrown out by the "Daily Mississippian" [2794] which is nothing unusual because they are constantly doing that as far as the Black Student Union is concerned.

* * * * * *

[2796] Q. Okay. Have you or any of the other black students at the University of Mississippi experienced any—have you had any problems in terms of grades you received and in terms of the manner in which black students are treated when it comes to grading and the manner in which white students are treated?

A. Well, myself, I've only had that ne particular incident. Recently—as of then.

Recently, this past semester I had an incident in which I had a death in my family and I missed an exam. I asked Dr. Trott, who, as I said earlier, was Dean of Students, to send letters to all of my instructors. She did. I returned. I went to see my biology instructor and he said, "Oh, I'm sorry, I can't give you a makeup test."

And I said "Okay." And I made various attempts to see [2797] the chairman of the department in which I was unable to see him so this will continue in the fall once I return.

There are—have been various students who have come to me and discussed with me problems that they have had with instructors in the business department, sociology, chemistry, as far as their grading policy is concerned and their testing goes.

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[2971] **TESTIMONY OF DR. JOHN MILLET**

* * * * *

PUBLISHER'S NO

ORIGINAL PAGIN

DR. JOHN D. MILLET

* * * * *

[2972] Q. Would you relate, please, for the Court your educational background?

A. I was born in Indianapolis. I went to college at Depauw University in Greencastle, Indiana.

My graduate work, my master's degree was at Columbia University in 1935, and my PhD Columbia University in 1938.

1938/39, I was post-doctoral fellow of the Social Science Research Council, and then for two years I worked for the Social Science Research Council in New York City.

In 1941, I joined the staff of the National Resources Planning Board in the Executive Office of the President in Washinton.

Q. And, Dr. Millett, if you would, please, sir, following this relation of your background educationally, would you give a brief overview of your employment history?

A. Yes. That is what I am doing, I am afraid. I joined the Army in 1941-'42, was discharged in 1946.

I became an associate professor at Columbia in 1945 on military leave. I returned to teaching February of 1946, and I [2973] became President of Miami University in Ohio in 1953, served there until 1964.

I became the first Chancellor of the Ohio Board of Regents in 1964, and served there until 1972.

From 1972 to 1980, I was a Vice President of the Academy for Educational Development. I retired from the Academy in 1980.

[2974] * * * * *

Q. You also mentioned, I believe, sir, the Academy for Educational Development.

What is the Academy?

TE:

ATION IS NOT CONTINUOUS.

A. The Academy for Educational Development was a spin-off from the Ford Foundation in 1962 or '63. It is a nonprofit corporation which does research and consulting work. Mostly in the field of higher education, but it also does extensive work overseas that involve elementary and secondary education.

Q. And what were your positions with the Academy? [2975] A. I was Vice President, Senior Vice President and Executive Vice President, but my role was to run the higher education program.

[2976] * * * * *

Q. Could you relate several representative examples of your endeavors since 1980, please?

A. I have done work for the Ohio Board of Regents, for the Minnesota Higher Education Coordinating Board, for the State of Pennsylvania in establishing a new State university system there.

I have done—I have done a major study for the Ford Foundation. I have been a consultant to the Bush Foundation in St. Paul.

I have done work with the University of Louisville, with [2977] Mississippi State University and Columbus Technical Institute, and I have conducted seminars at the University of Nebraska, University of Tennessee, University of Kentucky, Michigan State, Maryland Board of Higher Education, the University of Oklahoma, and I did two seminars for the Mississippi Board of Trustees.

Q. You mentioned a major study, Dr. Millet, for the Ford Foundation.

Could you briefly describe the scope of that study?

A. I had a grant from the Ford Foundation to make a study of relations and write a work about relationships between State Boards of Higher Education and Public Institutions of Higher Education.

Q. Do you have or have you served on the Board of any institution of higher learning, Dr. Millett?

A. I have been a member of the Board of Trustees at my college, Depauw University.

I have been a trustee of Educational Testing Service two different terms. I have been a Trustee of a College Board.

Q. Do you hold any honorary degrees?

A. Yes.

Q. How many?

[2978] A. Twenty-two.

Q. Have you written or published in the area of Higher Education?

A. Yes.

Q. Could you relate briefly, sir, the subject matters addressed and teh extent of your publications?

A. I am the author of twenty books, and I think roughly half are in the field of public administration, which is my scholarly discipline, and half had to do with State institutions of higher education in State Government, hence, the field of higher education.

[2979] * * * * *

MR. STEPHENSON: Your Honor, at this time we tender Dr. Millett as an expert in the area of higher education, Governments and administration.

THE COURT: Does the Plaintiff wish to voir dire on this witness?

MS. YOUNGER: Not for the United States.

MR. PRESSMAN: No, Your Nonor.

THE COURT: He will be accepted, and you may continue your examination.

[2981] * * * * *

Q. You have mentioned the term governant several times already this morning, Dr. Millett.

In the context of public higher education, what is meant by the term "governants" or "governments structure" ?

A. I mean the State Government administrative structure, which is established by State Governments for providing both advice and action on such matters as master planning and institutional missions, institutional programs, the financing, access, and the whole general problem of relationships to multiple institutions or campuses of higher education.

Q. Are these structures the same in all states?

A. No, they are not. They vary substantially from one state to another. There are some common characteristics.

Q. Well, would you describe, sir, the common characteristics of how these structures may differ?

A. Well, essentially, State Boards of Higher Education are of two kinds.

[2982] One we call a statewide Governing Board and there are such boards in twenty-two states of the United States. These states are quite varied.

Mississippi, of course, is one of them. Here in the South, this is the organizational structure and in North Carolina, in Georgia and in Florida.

Interestingly enough, four out of six states in New England have statewide governing boards; Maine, New Hampshire, Rhode Island and Massachusetts.

There is a statewide governing board in West Virginia and a statewide governing board in Wisconsis, and there is a statewide governing board in North Dakota, South Dakota, Montana, Iowa, Nebraska, Arizona, Nevada, Idaho, Oregon, Alaska and Hawaii.

[2983] * * * * *

Q. Have you examined, air, the government structure in the State of Mississippi for public institutions of higher learning?

A. I did this as a part of the study I did in 1978/79.

Q. Well, would you describe the structure briefly, please, sir for the Court?

A. Well, there is a Board of Trustees of State Institutions of Higher Learning, which is made up of twelve members, plus a special member called the LeBauve trustee.

[2984] The members are appointed for twelve year terms. The Board was established by constitutional rescription in 1944, although its legal origins go back before 1944.

There are eight individual campuses, plus the University of Mississippi Medical Center at Jackson, which really makes a ninth campus in the public system of higher education institutions.

The Board in this state has no authority in relation to two year institutions. Some governing boards do.

The governing board in this state—I have emphasize, the governing board in this state has maintained a relatively small administrative staff and has given very substantial management authority to each of the individual institutions.

Q. Dr. Millett, do you have an opinion as to the educational soundness of the government structure of the Mississippi Public Institutions of Higher Learning?

A. Yes. I believe—

Q Would you answer it in the record, sir.

A. I am sorry. I believe that the structure in this State is a very sound structure.

It is one comparable, as I have said, to that which exists in twenty-one other states.

It has exercised its authority with a good deal of caution and care, it seems to me, over the years that I have known anything about this Board, and it is a Board which is—has

had different problems in connection with the available resources for the various [2985] institutions.

Q. Have you reached any conclusions, sir, with respect to the Mississippi Board as a form advantageous or disadvantageous to State Government?

A. I think this Board is advantageous to State Government.

Q. Would you explain why, please, sir?

A. Well, it is advantageous because of the authorities which a governing board has over a public institution.

As I said before, it is both the governing board of each individual institution, and it is the State Board of Higher Education at the same time. It has a dual role to perform.

It does have authority to define missions, which a coordinating board does not have. It can only suggest.

It has authority to allocate available resources as equitably as is possible. It has the role of discontinuing programs or decided to be not of a desirable quality or not to be necessary to the needs of the State and students.

Q. Have you reached any conclusions, sir, with to the institutional autonomy provided by the Board of Trustees?

A. Yes. I think this is very important. I think this is a virtue of a Mississippi structure that is not generally appreciated some times in this state and sometimes out of this state.

Q. Would you explain why, please, sir?

A. Well, autonomy gives a great deal of discretion to the [2986] individual institutions in their use of such resources as are available. It gives to the institutions options in connection with the solicitation or obtainin of outside resources other than those from the State Government.

It gives a good deal of incentive to each individual institution to seek outside sources of income.

Also it is terribly important that management autonomy is economical.

* * * * *

Q. Dr. Millett, in the context of institutions of higher learning within a system of higher education, what is meant by the term mission?

A. Well, mission defines the general purpose and scope of an individual institution of higher education. It defines purpose and scope in relation to instruction of students, in relation to [2987] research and in relation to public service.

Could you explain the significance of instructional program in the context of mission?

A. Well, the Federal Government, Office of Education or Department of Education classified all institutions by purpose into five categories.

* * * * *

The labels are doctorial granting, comprehensive, general baccalaureate, specialized, and two years.

Those are—There are five principle classifications.

Will you pardon me if I say that in the first study I ever did of higher education was done as an associate of our American [2988] universities in 1949 to 1952. I prepared a similar classification systems on which all existing classifications are built.

* * * * *

Q. What is the bases for the classification?

A. But the easiest way to look at it is that it has to do with the level of degrees that are granted, and has to do with the fields in which the degrees are granted.

Out of about fifteen hundred public institutions of higher education in this country, there would be about a hundred doctorial granting institutions, there would be between three hundred and fifty, four hundred comprehensive institutions, and about a hundred general baccalaureate institutions, and there would be around nine

hundred something two year institutions that makes up the present structure of public higher education in America.

* * * * *

A. Some institutions have a major research mission and in other instances the research is more general in scope.

There is a phrase known as or institutions called major universities in research in this country, and there are about sixty major research institutions that fit this definition.

Again, to really receive the designation, it is a – It is – A research university would be one that has about twenty million dollars or more and separately budgeted resources in any one year.

[2990(a)] * * * * *

Q. Could you relate your understanding of the Mississippi institutions' missions?

A. Well, I thought they were quite well defined in that November 1, 1985 statement.

I think on a university level, they are educationally sound and efficient.

Q. Could you tell me, please, sir, your understanding of the missions, if your would?

A. Yes. There are three doctoral granting institutions, four regionals and I believe one urban university in Jackson.

[2991] * * * * *

TESTIMONY OF DR. JOHN D. MILLETT

Q. Dr. Millett, during your review of the various institutions in the State of Mississippi, did you make a determination as to whether or not there were some institutions identified as black institutions and others as white institutions?

A. Yes.

Q. All right. Now, what is the black institution?

A. Well, there are three predominantly black institutions in this State, Alcorn, Mississippi Valley and Jackson State.

Q. Do you believe that all black institutions should have the same mission?

A. No.

Q. What do you believe the mission of a black institution to be?

A. Well, it has a mission in connection with racial identification, but it also has a mission in terms of its instructional [2992] programs, and that may differ from one institution to another.

Q. Is it your contention that black institutions should continue to exist?

A. Yes.

Q. Is it your contention that predominantly white institutions should not be desegregated?

A. No.

Q. Do you believe that white institutions should be comprehensive universities?

A. Some of them are. I would, again, depend upon the needs that are in the state and the resources that are available for support buildings, those instructional programs.

Q. Could you identify the black institution in the State of Mississippi, which in your opinion is a comprehensive university?

A. I think it would be Jackson State at the present time.

Q. All right. I believe you testified –

A. And I am talking now about the federal definitions, not the State Government definitions.

I want to be sure of that. I want to be sure that that's understood.

Q. Is there any educational need in attracting white to predominantly black institutions?

A. Well, I assume that they are the same needs in a predominantly black institution as there are in—in attracting white students as there are in a predominantly white [2993] institution in attracting black students.

An effort has to be made. The students have to be made to feel that they are welcomed and there has to be a general atmosphere of cooperation and harmony on the campus in order to have an effective instructional program.

Q. Is it your contention that black institutions should remain predominantly black?

A. Yes, I think so for the time being. As long as it is understood that blacks have access to the predominantly white instructions and the black student have a choice, either between the predominantly white institution or predominantly black institution.

If you believe in student choice, then I think there is a place in the foreseeable future for the predominantly black public institution.

There is a book that I want to call your attention to by Jacqueline Flemming called *Black Colleges*.

Dr. Flemming was a graduate of Bonert and has her doctor's degree from Hardin. And Dr. Flemming's conclusion in this book Black Colleges, was that black colleges provide a better residential, social, academic atmosphere for many black students than they receive in a predominantly white institution.

[2996] of Mississippi, urban university institutions?

A. I think there is a prospect that Jackson State may become an urban university over a period of time. I doubt that it would meet my definition of an urban university yet, but I have not looked at the institution recently.

Q. When did you last review the institution?

Q. It would be about 1984.

[3001] * * * * *

Q. And their designation in the last ten, you think, would be totally independent of the kinds of programs they were provided and the resources they were again before the last ten years?

A. I assumes that there are historical factors at work here. There always are in every institution that I have ever visited.

Q. In fact, do you recall that in your outline of missions that you had at the time of your deposition, you had a sentence that said, "The role and mission of institutions in every State are a matter of historical development" ?

A. I think I just said that. I know that to be true in Ohio.

* * * * *

Q. Isn't it a fair characterization of the Board admissions standards that they have reflected that one mission of the system of higher education is to give access to students who are less well prepared, but have – Place that mission primarily at the historically black institutions?

A. I assume that there is nothing that prevents white [3009] students from taking advantage of historically black institutions.

Q. But do you agree with the characterization I made?

A. Yes.

[3010] * * * * *

Q. Would you agree that one affect of the 1981 mission statement was to pretty much lock in the status of the eight universities as they existed at that point in terms of the distinction between doctorial and the other kinds of institutions that you have identified?

A. The mission statement of 1981 did largely confirm what was the existing structure of the State with certain modifications.

Q. And make it difficult to move beyond that structure?

A. Yes.

Q. You refer to the importance of harmony on the campus?

A. Yes

Q. Would you see harmony on the campus for black students who were at a historically white institution as important in terms of that institutions ability in the future to increase its percentage of black students?

A. Yes.

* * * * *

TESTIMONY OF LUCY MARTIN

[3047] reflected by how well our needs have been funded in the previous years.

This year as part of your legislative presentation, we attempted to track what our appropriations had been over the past six or seven years and to put it more in perspective and to eliminate the effects inflation had on our budget, we expressed these in terms of constant 1985 dollars,

which basically showed if we were funded the total request that we had made of the legislature of the hundred and seventy-seven million dollars in terms of constant dollars, we still would not be at the level we were in 1979.

Q. Do you have Board 358 with you?

A. Yes, I do.

Q. All right.

A. This is a graphic–

THE COURT: Get me that document.

BY MR. STEPHENSON:

Q. For the record, would you indicate, please, ma'am, what this document intended to reflect?

A. This is a comparison of our actual appropriation, which is the line graph with the square versus done and the 1985 appropriation. We translated 1979 through 1987 in terms of 1985 constant dollars.

The constant appropriation is represented by the X, and this shows in our appropriation in 1979 in terms of the actual [3048] dollars was approximately a hundred and ten million dollars.

If we expressed that hundred and ten million in terms of 1985 constant dollars, it was just under a hundred and forty-nine million dollars in reality.

As we moved to 1987, the square up there shows our actual request was approximately a hundred and seventy-eight million dollars, which in terms of 1985 constant dollars would be approximately a hundred and fifty million.

We received a hundred and fifty-five million of the hundred and seventy-eight million, which probably without doing all of the calculations would be approximately a hundred and thirty-two to a hundred and thirty-five million in actual 1985 dollars, which would be less than that hundred and forty-nine back in 1979.

Q. Okay.

A. We have basically not kept up with the inflation during that period by a considerable margin.

MR. STEPHENSON: Your Honor, we offer Board 358 into evidence.

THE COURT: All right. If there is no objection, it will be received.

MR. STEPHENSON:

Q. Ms. Martin, have you examined State appropriations for higher education over time as a percentage of the State general fund?

[3055] * * * * *

Q. Does the funding formula include any factor relating to earlier patters of funding?

A. I'm not sure.

Q. Okay. Let me be more specific.

A. Okay.

Q. Does it include any factor based on the premise that earlier funding was not equitable to historically black institutions?

[3056] A. Not specifically in that manner, no.

[3123] * * * * *

TESTIMONY OF ROY L. LOVVORN

ROY L. LOVVORN, having been first duly sworn, was examined and testified as follows:

* * * * *

Q. Where do you live, please, sir?

A. I live in Raleigh, North Carolina.

Q. When and where did you receive your higher education?

A. I got a BS degree in agriculture from Auburn University in 1931. I received a Master's degree in soil science from the University of Missouri in 1933. I obtained a PhD in agriculture agronomy, but with an agronomy/botany joint major at the University of Wisconsin in 1942.

[3124] Q. Starting in 1933 when you get you Master's degree and going up to 1976, tell us what has been your professional employment.

A. Well, from the time I got my Master's degree in 1933 until 1936, I lived in Missouri and served with the extension service for a year and a half and with the soil conservation service for a year and a half.

In 1936 I joined the faculty at North Carolina State University as an assistant professsor of agronomy and continued there in teaching and research in agronomy until January of 1950.

At that time, I joined the agricultural research service of the U.S. Department of Agriculture and was stationed in Beltsville, Maryland, as the agronomist in charge of the division of weed investigations.

I returned to Raleigh and North Carolina State University in September 1953. I spent one year as director of instruction in the school of agriculture, and then the following year, 1955, I was named director of research in the school of agriculture at that institution and remained there in that capacity until 1969.

At that time I joined the USDA again, this time as the administrator of the cooperative state research service, an agency within the the department of agriculture in Washington, where I worked until I retired in June of 19676.

Q. As director of research, school of agriculture, North [3125] Carolina State University from 1955 to 1969, what were you duties and responsibilities?

A. As director of research, in that capacity I was responsible for all the research and agriculture, home economics and forestry. It's normally referred to as the director of agricultural experimentation station, as it's now called, the for the state.

Q. Is North Carolina State University a land grant institution?

A. Yes.

Q. How many such institutions are in North Carolina?

A. There are two. There's North Carolina State University and North Carolina A&T University.

* * * * *

[3126] Q. Would you describe for the Court the cooperative state research service and its function?

A. The cooperative state research service is the agency designated by the secretary of agriculture to administer the funds that are appropriated by the congress to support agricultural research, forestry research and home economics research at the land grant institutions in this country.

Q. Now as administrator of the cooperative state research service of the United States department of Agriculture from 1969 to 1976, what were your duties and responsibilities?

A. Well, as the head of the agency, President Truman used to say, "the buck stops there." I was the head of it or the administrator. It was my responsibility to see that the responsibilities that the department of agriculture had in administering the federal funds that go with the land grant colleges were administered according to the law and administered with the—within the partnership framework with the land grant institutions.

Q. Between 1969 and 1976, did you have any responsibilities with the United States congress?

A. Yes, sir.

Q. Would you explain?

A. My main contact with them was to appear annually before the appropriations committee for agriculture, that is both in the House and in the senate.

[3128] Q. During those years when you were administrator of the agency, did you have any direct dealings with Mississippi State University?

A. Yes. As the administrative agency I had direct dealings with every land grant institution. And I might add that I have visited every one of them in all the fifty states. And certainly during that time I was at Mississippi State on several occasions.

[3137] * * * * *

MR. GOODMAN: If Your Honor please, we tender Dr. Lovvorn as an expert in the field of agricultural and forestry research.

* * * * *

THE COURT: All right. This witness will be accepted as qualified to give opinions in that field.

[3142] * * * * *

Q. Dr. Lovvern, do you have an opinion as to the criteria for an educationally effective and efficient state program of agricultural research?

A. Yes, I do.

Q. And what is your opinion as to the criteria?

A. Well, I've jotted down some notes here. May I use those?

Q. You're entitled to, yes, sir.

A. I can state it more concisely than I would do if I ramble along. I come out with about something like this: One, develop a mechanism for identifying research needs.

Two, develop an organizational structure for responding to those needs.

And, three, to develop a state-wide organization with one central point of responsibility and control.

Four, develop a program consistent with state and national funding policies.

Five, develop a personnel policy for recruitment and retaining a competent staff.

Six, develop a policy of clearly cut lines of responsibility at all levels within the organization.

Seven, develop a working relationship with the other state and national organizations.

[3143] Eight, to develop an attitude among the staff towards service to the citizens.

The reasons I put the last one in there, the whole philosophy of the land grant system is of service to the people. And you've got to have people with that kind of an attitude if they are going to perform in a way that's expected.

Q. Following up on your assignment in connection with this case, have you made an evaluation of the agricultural and research – agricultural and forestry research program in Mississippi?

A. Yes.

Q. Would you tell the court the results of that evaluation, your conclusion?

A. Well, based on those criteria I just enumerated and on our visits to these campuses, plus our other associations with them during my whole agricultural tenure, I have be very much impressed by the research management or the structure for research, as I have observed it, in the state.

Q. Dr. Lovvern, do you have an opinion as to the effects of that program on the quality of educational opportunity for students at Mississippi State University?

A. Yes, I have an opinion, yes.

Q. And what is that?

A. Well, at Mississippi State as well as the other land grant institutions, there is a – there is an advantage that

students have by virtue of being taught by professors, by instructors that [3144] are engaged both in research and in teaching. So on the one hand they are subjected to a greater variety of instructors, and on the other hand these instructors are, generally speaking, are more up to date on what's going on in the research world than they might not otherwise be, and so students benefit from that association.

And, of course, also a great many of them, by virtue of that arrangement, have some summer employment. That was true in my own case. I suspected I'm – my professional direction was pretty largely determined that by the fact that while I was an undergrad student I worked each summer for a research professor and he was instrumental at least in encouraging me to go on to do graduate work and I came to wind up where I did, and I consider that a positive influence.

Q. Do you have an opinion as to the effects of the program on the quality of educational opportunity for students at Alcorn State Univerrsity?

[3145] * * * * *

A. Well, to a certain extent what I said about Mississippi State would be true there. There is an additional advantage that Alcorn would have that Mississippi State does not have and that is in a smaller place like Mississippi where the classes are smaller, you get more individual counseling and more personal attention and that would be a positive influence that you wouldn't have at a larger institution. So I would say those somewhat offset each other. The advantages I enumerated earlier for Mississippi State would be an advantage at Alcorn, but would not be quite as pronounced at Mississippi State.

On the other hand, the additional advantage of smaller classes and more closely associated with the professors and

more counseling would be a distinct advantage over a larger institution.

Q. Dr. Lovvern, do you have an opinion as to whether or not the program in Mississippi in consistent with the policies and practices of the United States department of agriculture in the field of agricultural and forestry research?

A. Yes.

Q. What is that opinion?

A. Well, it's—I would say that it's very much in line with the policies of the U.S. government. If I hadn's thought so, I [3146] would be on a very defensive position because I administered those funds before I ever came here. But I think there are two or three reasons I would say that.

Q. Okay?

A. In the first place, these institutions, as well as the other states that have two land grant colleges, they submit an annual program of work that's jointly signed by the director of agriculture at Alcorn and the director of the experiment station at Mississippi State. They jointly submit that to Washington annually.

Secondly, station reviews or institutional reviews that CSRS does among its client institutions are conducted periodically at both of these institutions and those reports I have looked at and they are favorable to the set up.

And, thirdly, the leaders of the research program both at Alcorn and Mississippi State are people that are recognized as national leaders and participate in national committees. I know Dr. Foil has been a member of the experimentation committee on organizational policies, which is a national organization. And I'm not sure about Dr. Donald, but he would have—be privileged to serve in that capacity. So the answer to my question is yes.

* * * * *

[3167] CROSS EXAMINATION

Q. All right. Now, Doctor, could you tell us when Alcorn State University got its first direct federal funding?

A. For research?

Q. Under the federal 1977 Act, sir.

A. Well, I just asked you—

Q. It was implemented in 1979. You can tell us what that is.

A. I was asking for clarification.

Q. Yes, sir.

A. Your question, when did they get their first—

Q. Direct federal funding.

A. For research?

Q. For agriculture and research extension. Direct.

[3168] A. They got their first director in—the 1977 Act, I believe.

* * * * *

Q. Is it not true, sir that from 1878 until 1977, ninety-nine years, that Mississippi State University had received direct funding at least every year that it—would you agree with that or you disagree? Or just tell us.

A. Well, I would—what was your time frame again now?

Q. The enabling legislation 1878 until 1977, almost a hundred years, that Mississippi State had received direct funding every year from the federal government or every year—yes.

A. Well, the Hatch Act was passed in 1887 so the State of Mississippi has received research funds continually since that time, if that's the answer to your question.

[3181] * * * * *

Q. On your conclusions on this researching, I don't know what it is, can you just tell us how Alcorn State University fits into the overall scheme of making the state bet-

ter for all people? I think your conclusion spoke to that in a more technical sense, but—

A. Yes, the—the Mississippi State legislature in 1971, upon the recommendation of the presidents of both institutions, created a branch experiment, a branch experiment station at Alcorn State University, which meant that the research at Alcorn State University is now an integral part of the Mississippi agricultural experiment station and which, in my judgment, was a very forward kind of legislation.

Q. Uh-huh.

A. And I consider it a model for other states where they have two land grant institutions within the same state.

Q. Uh-huh. Now, you stated that it's model and it's an excellent. I think your—there's an excellent cooperation between two institutions at both the administrative level and among the scientists and you basically say this is a model for the nation to take a look at. Is that not correct?

A. In the states that have two land grant institutions.

Q. That's correct. Two land grant. Okay. Now, but when we asked you, sir, to identify the role of Alcorn State and the overall state plan, you were general but you were never specific. Now, let me give you an opportunity. Can you just be a little more precise in terms of the role and scope of Alcorn, in the—

A. No, because I feel very strongly that that's a decision that Mississippi needs to make.

Q. Okay.

A. They have the mechanism—within the experimental station director's office, they have a mechanism for identifying and

[3253] * * * * *

TESTIMONY OF DR. LLOYD DAVIS,

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[3254] Q. Where do you live, please, sir?

A. I live in Great Falls, Virginia.

Q. When and where did you receive your higher education?

A. I graduated from Cornell University in New York with a B.S. in agriculture in 1942. I received a Master's degree from Cornell in 1947, and a PhD from Cornell in agricultural economics in 1951.

Q. From 1947 until 1980, what was your professional employment?

A If I might go back a year, I became an Assistant County Agent in Wyoming County, New York in 1946, I believe the year was.

I resigned that job to return to Cornell to get a Master's degree in agricultural economics. After completing that, I became a professor of public speaking at Cornell.

After two years, I decided that was not my future. I resigned to get a doctorate degree in agricultural economics at Cornell.

Following completion of that in 1951, I became a professor of agricultural economics at Cornell, designed primarily to be an extnesion specialist in agricultural [3255] economics. My specialty was fruit and vegetable marketing and fruit and vegetable farm management.

In 1956, I resigned that position to become Chief of the Fruit and Vegetable Marketing Branch in the Federal Extension Service, USDA, Washington.

1959, I went to the University of Massachusetts as Director of the Cooperative Extension Service.

1962, I returned to Washington as Deputy Administrator of the Extension Service in the Department of Agriculture.

A year later, I became Administrator of the Extension Service. 1970, or 1971, I am not quite sure, I left that position to become Director of the Science and Education Staff in the Department of Agriculture.

This is the staff in the Secretary's Office concerned with coordinating the research planning of many agencies involved.

1973, I retired from the Department. There followed a period of eighteen months during which I built a house, wrote a book and did a few other things, and then became Executive Director of the National Advisory Council on Extension and Continuing Education, which is an advisory council set up under the Higher Education Act and administered at HEW.

[3256] * * * * * *

Q. Who are the parties to a program of Cooperative Extension, to a State program of Cooperative Extension?

A. Cooperative Extension is a cooperative venture between the United States Department of Agriculture and the land grant colleges and County Government, jointly financed through the United States Congress, State Legislature and County Government.

They are administered by land grant colleges in cooperation with the U.S. Department of Agriculture.

[3383] * * * * *

Q. When you did your analysis, did you consider [3384] the history of the -- did you consider whether or not there were any historical inequities between funding received from the State by the traditionally black universities as opposed to the traditionally white universities?

A. By historic, if you mean prior to, say, 1980, I really did not. The date analyses which I did—really I did most of that from 1980 forward. If you want to say historically did I look back into the '40's, '50's and '60's, I did not. I looked at the formula and its application, really from 1979, 1980 up until the current time.

[3283] * * * * *

Q. Do those 1890 programs duplicate 1982 programs?

* * * * *

[3284] Q. Do you remember the question, sir?

A. I think so. The legislation under which the funds are provided to the 1890 institutions requires that there will be a coordinated plan, jointly submitted by the 1890 and 1862 institutions in each State.

The purpose of this is to help to assure that there will not be duplication. A part of the review process each year by the Federal Extension Service is to ensure that that requirement of Congress is carried out and that these programs are truly supplementary to one another rather than duplicatory.

[3286] * * * * *

Q. Dr. Davis, do you have an opinion as to the purpose of a State Cooperative Extension Program?

A. Yes, sir.

Q. Would you tell me what that opinion is, please?

A. Perhaps the best way to state that purpose would be to quote the Smith-Lever Act, which says that the purpose is to aid in diffusing among the people of the United States useful and practical information on agriculture, home economics and subjects related thereto and to encourage application of the same.

Then the Act goes on to say that Extension shall consist of instruction and demonstration in agriculture, home

economics and subjects related thereto for people who are not resident at or members of colleges and universities.

That has been interpreted over the years as meaning that it cannot be instruction that gives college credit. The funds cannot be used for college credit [3287] instruction.

Another way to define this purpose would be to look at what has been said over the years in the Congress as to what they expect the Extension to do, and they have made it clear that the purpose is to help farm families improve their farm operations, to help farm related businesses to improve their operations, to help people gain knowledge to improve family living and gain knowledge to apply in a role as citizens to improve rural community life.

[3295] * * * * *

Q. Thank you, sir. Now, have you undertaken to make an evaluation of the State Cooperative Extension Program in Mississippi?]

A. Yes, sir.

Q. And would you tell us, please, sir, the results of that evaluation?

A. In relation to these criteria, the Extension Programs in the State of Mississippi rate very well.

I could comment briefly on the relation of those programs to some of these criteria.

[3296] The Comprehensive Statewide Educational Program. It is comprehensive. It deals with a wide range of subjects that are important to agriculture and family living in the State of Mississippi. It is comprehensive also in the sense that it involves the appropriate scientific disciplines in that educational program. Comprehensive in another sense in that it is coordinated, and comprehensive as mentioned in the Farm Act, coordinated and comprehensive in cooperation between the two institutions involved.

It does integrate knowledge from many disciplines. A wide range of scientific fields that are important to farmers in making decisions and taking action. The many fields in which research is conducted by the USDA, by Mississippi State and by Alcorn University.

The close coordination exists with the research programs of the universities and the USDA. We have the specialists personnel, about a hundred of them with detailed scientific training in those fields, who are housed on the campus and in close communications with their research personnel and some are located in the field where they are close to branch experiment stations.

It is indeed close coordination with research programs and the application of research results.

[3297] Coordination with other programs of the USDA has been excellent. For example, there is a new Conservation Reserve Program that has been enacted by Congress.

The Extension Service accepts the responsibility of informing the farmers about that law, the options they have under it and the possible consequences of participation.

They carry on that kind of function regularly as there is a national need and national responsibility to do so.

The systems for involving people, the people served in program planning and evaluation are well developed. The Director has a statewide committee of citizens who are knowledgeable about the many facets of our program and the needs of people in relation to those programs which he consults in his responsibilities.

Each county has advisory councils and committees with people well knowledgeable on the needs of people and who see these from different points of view. Those committees are extensively used in planning the programs and helping to carry them out and evaluating the results.

The program emphasis in staffing is indeed appropriate to the needs of the people. This [3298] involvement of the people themselves in the planning process helps to assure that we have the kind of emphasis appropriate to this State within the national responsibilities.

As I have said, programs are conducted without discrimination based on race, religion, and national origin.

The Court in the *Wade* case after considerable study reached that conclusion. The current data on participation of the people in the programs reaffirms that, the numbers of people who are participating in very close proximity to the percentages of those people in the total population.

I can cite other evidence that indicates that this is the case.

Q. Thank you.

A. And a high degree of credibility, obviously. There are hundreds of thousands, perhaps more people in the State who are relying on Extension educational programs for important information, who consider it important to their businesses and their lives.

Q. One final question, please, sir. Do you have an opinion as to whether or not the Cooperative Extension Program in Mississippi is consistent with the policies and practices of the United States Department [3299] of Agriculture in the field of Cooperative Extension?

A. Yes, I do.

Q. And what is that opinion?

A. My opinion is that it is indeed consistent with the policies of the Department of Agriculture. I have seen nothing that is inconsistent with the policies that I know of.

The whole process of program planning, review, evaluation in which the Department is involved as a partner with the State helps to assure that this is the case.

I can speak from experience in Washington that when we have observed situations where it was not the case, we have brought these to the attention of the State Director and discussed these and reached some adjustments to make them the case.

[3334] * * * * *

TESTIMONY OF DR. JOSEPH JOHNSON

THE COURT: All right. Dr. Joseph Johnson, having been first duly sworn, was examined and testified as follows:

THE WITNESS: My name is Joseph E. Johnson.

DIRECT EXAMINATION

* * * * *

Q. Would you state your address and place of employment for the record, please, sir.

A. My home address is 5334 Riverbriar Road, Knoxville, Tenneessee. I'm employed by the University of [3335] Tennessee.

Q. What's your position with the university?

A. Vice President for Development and Executive Vice President.

* * * * *

MR. STEPHENSON: Your Honor, we tender at this time Dr. Johnson as an expert in the area of higher education administration with emphasis on higher education finance.

* * * * *

THE COURT: Very well, he will be accepted [3345] as a witness qualified to give an opinion of higher education administration and finance.

[3347] * * * * *

Q. Dr. Johnson, with respect to the findings you made in your 1984-85 study, sir, would you first relate the findings you made in relation to your Southern Regional Education Board comparisons.

A. The—What I was doing in making the Southern Regional Education Board comparison, again, was to see how the funding in Mississippi in total and by type of institution related to normative date within the South for like institutions.

Q. If I could interrupt you right there, what do you mean by like institutions, please, sir?

A. Like institutions, institutions that are alike or somewhat alike in terms of role and mission. Is the institution—If you got an institution in Georgia [3348] that is—that's primarily undergraduate, do we have institutions in Mississippi that are primarily undergraduate, and how do they compare in funding. Or if you got an institution that's more comprehensive in Mississippi, it would be akin to a University of Kentucky, how does that institution in Mississippi compare with that kind of institution in terms of role and mission, public service, research, instruction and so forth.

Q. And if you would continue, please, sir, with respect to your findings in this area.

A. What I found was, one, that the State of Mississippi in relation to its ability income-wise as a state, made a good effort, a strong effort, within the region in its support of higher education as an effort.

What I found in terms of total dollar support for higher education, the State of Mississippi did not rank well. It was doing well with what it had, but its resources were limited, and still are, I assume.

Then in looking at the various types of institutions, found that when we took the—In this state, as probably has been stated to the Court previously, you have three

categories or groupings of institutions; The comprehensive, group one; the urban, group two; and the regional, group three.

I found in reviewing the date that the comprehensive [3349]institutions in this state fair worse than any other group generally when compared with like institutions in the South. In other words, the funding process in Mississippi left those comprehensive institutions further behind their peers, their like institutions in Arkansas and Georgia and Louisiana and so forth than was true of the case of the regional institutions.

The regional institutions, looking at 1985-86 date, tended to be financed better than the regional averages. The comprehensive universities in 1985-86 were financed at a level below like institutions.

Q. Dr. Johnson, looking at your report, Board Exhibit 347, page two, what were your specific findings with respect to the percentage relationships when you made the peer institution comparisons?

* * * * *

A. Okay. Page two. What we found at that time was that the Mississippi State University and University of Mississippi and Southern Mississippi, when considered as a group, were more than fifteen percent below the southern regional average for like institutions. Per student appropriation at Jackson State was at that time – Well, in 1985-86, was nine percent above the regional [3350] average for like institutions. And the per student appropriations for the four regional universities – Alcorn, Mississippi Valley, Mississippi University for Women and Delta – Were more than twenty-five percent above the southern regional average for like institutions.

* * * * *

Q. Okay. Dr. Johnson, when were you first contacted with respect to this litigation?

A. In 1986, fall.

Q. Okay. And what was your assignment, please, sir?

A. I was asked to do not a great deal different than what I did in 1984-85. I was asked to look at the formula process for the state of Mississippi's publicly aided Institutions of Higher Learning and review that formula process and offer my views and be in a position to offer my views as to the educational soundness of that formula.

[3365] Q. Dr. Johnson, do you have an opinion, sir, as to the educational reasonableness of the formula funding process in Mississippi today?

A. The formula used in Mississippi is based on sound educational principles. It is a formula that recognizes differences in the roles and missions of institutions and it – and it makes a distinction between those institutions that are largely undergraduate and those institutions that are largely undergraduate and those that have graduate programs. It makes a distinction between those institutions that may be heavily oriented toward engineering versus those that may be heavily oriented toward the liberal arts.

It deals with those institutions, it groups the institutions in terms of role and mission as defined by the Board in Mississippi. And for those reasons, I think the formula is a soundly based process. It's based on sound academic principles.

* * * * *

[3383] Q. When you did your analysis, did you consider [3384] the history of the – did you consider whether or not there were any historical inequities between funding received from the State by the traditionally black universities as opposed to the traditionally white universities?

A. By historic, if you mean prior to, say, 1980, I really did not. The data analyses which I did – really I did most of that from 1980 forward. If you want to say historically

did I look back into the '40's, '50's and '60's, I did not. I looked at the formula and its application, really from 1979, 1980 up until the current time.

[3417] **TESTIMONY OF DR. AUBREY K. LUCAS,**

* * * * * *

[3418] Mississippi, and I attended the University of Southern Mississippi as an undergraduate and finished there in 1955.

I stayed at the University for a master's degree, and during that time I worked as an assistant in the reading clinic, at what was then Mississippi Southern College.

In 1956, I taught at Hinds Junior College in the English Department, and then in 1957, I returned to the University of Southern Mississippi as Director of Admissions and Assistant Professor of Education.

In 1963, I was appointed Registrar at the University of Southern Mississippi and Associate Professor of Education.

In 1969, I was appointed Graduate Dean at U.S.M. and Professor of Education.

IN 1971, I went to Delta State Univesity as President, and in 1975, returned to the University of Southern Mississippi as President and Professor of Higher Education.

Q. And you are now President of the University of Southern Mississippi?

A. That is correct. You asked for the educational history.

I earned the Doctorate in Higher Education at Florida State University in 1966.

[3422] * * * * *

Q. Dr. Lucas, you mentioned a minute ago the policy and the Plan of Compliance, I believe, did you not?

A. Yes.

Q. Who is responsible for enactment of that policy and how is it transmitted throughout your institution?

A. Well, the Plan of Compliance was developed in this manner. The institutions drew up individual plans.

These plans went to a system-wide committee, composed of the institutional representatives and Board members. This has been a while. I cannot remember exactly what occurred, but I do remember that the plans were examined from the standpoint of a statewide approach or concern and were approved by the Board of Trustees.

That then became the policy of the Board of Trustees for that particular institution. The thrust of the Plan was to increase other race enrollments, other race faculty and staff at the eight universities under the Board.

* * * * *

A. Now, that Plan is given to the President to administer under the supervision of the Board.

[3423] The President is required to prepare annually a report which goes to the Board and that Plan sets out a record of what this institution has done over the preceding year in accomplishing the Plan.

The President has responsibility to monitor it. He is assisted by what our institution calls the Executive Assistant to the President, who is responsible for affirmative action efforts within the institution, but each Vice President, each Dean, each Department Head or Chair has a responsibility and, of course, every staff member in the university.

* * * * *

[3424] Q. Has the University of Southern Mississippi had any difficult in attracting, employing or retaining black faculty members?

A. Yes.

[3425] Q. Could you describe some of those difficulties?

A. Yes. At the time that we were developing our Plan of Compliance, institutions throughout America were developing similar affirmative action plans.

Some three thousand other institutions in American have developed those kinds of plans or at least there is the possibility for that because there are that many institutions of higher learning.

Not only were we doing that in higher education, but businesses and industries were realizing that they must do that.

So, when we recruit faculty, particularly minority faculty, we face some very formidable competition.

Our salaries in Mississippi are not as competitive as they need to be. They are not up to the southeastern average, so other institutions in the south can offer more money than can we.

We have—, I think the record will show that we have brought to our campus some superb black faculty, but as opportunities come to them at other institutions, they really have no choice but to take advantage of them from the standpoint of finances and professional advancement, and in many cases they will have fewer courses to teach so they can attend to their research.

It is just very difficult to keep minority faculty. [3426] We have had a program at the university which has attempted to identify within our student body students who had the potential to become faculty, and we have through a program of nurture and mentoring in many cases paid their way to graduate school, and they have come back to our faculty.

We have done several that way. Three in business. One of whom left us to become Dean of the School of Business at Jackson State. Two of whom are still with us.

They are so outstanding that they're constantly sought by other people. Our advantage is they are from our region, so they would prefer to stay there, and we have increased their salaries so that I am thinking of one, because I dealt with it just recently, who is an associated professor

of accounting. His salary this next year will be as high as his white counter-parts who are at what we in the south say full professor rank; that is, professor rank, and some of them have been in that rank for a long, long time.

* * * * *

[3431] Q. Do you have an Affirmative Action Plan that relates to employment?

A. Yes. Yes, we do.

Q. Who is responsible for carrying that Plan out?

A. The Affirmative Action Officer of the University. And at budget hearings, he reviews the employment practices in every department. We have an occasion when we felt that a particular department was not moving as fast as we though it ought to to employ other race, we would say, you may not fill this position until you fill it with a minority person.

So, we monitor that. There also is maintained inthe Personnel Office the rationale for the decision that is made employing a particular person. The listing of all people who applied and who were considered is given, and there is an explanation as to why the particular person was chosen for that particular position.

Q. Dr. Lucas, what effects, if any, has the implementation of the Board's Plan of Compliance had upon the operations of the University of Southern Mississippi?

A. Well, it has—It has heightened our awareness of the need to be diligent in increasing—Well, making this [3432] institution more inclusive.

The fact is or that is being diligent and vigerous in our recruiting and in our employing to make sure that we bring in additional other race students and other race faculty.

I think that is—I think that is—That is very basic. But it has—It has also affected what we want to believe is our ability to serve the State of Mississippi, and this is—This is

a topic that could get me in trouble with my Board of Trustees, but in protecting some of our historically black institutions and enhancing their abilities to attract other race students, we have been restricted and we have even lost some programs and eventually a center.

Q. What center are you talking about?

A. I am talking about the Natchez Center. In the late 50's, I believe, or early 60's, the University of Southern Mississippi operated at first an Extension Center.

We were there primarily offering courses for teachers. Now, to upgrade their certificates and to renew their certificates.

Well, there was a need for other course work in the Natchez region, and that Center was upgraded to what we call a Resident Center, which simply meant that you could take more courses, earn more than quarter hours, with us, and apply them toward a degree there, than if it was just [3433] an Extension Program.

Enrollments increased. We started a nursing program, and eventually the Board of Trustees allowed us to develop what is called a degree completion program, so that the student could actually earn all of his credits in the Natchez area and have the degree conferred, would not have to come to the home campus for any work.

I believe it was soon after the Compliance Plan was developed, the Board of Trustees mandated that a significant percentage of the faculty of the Natchez Center would be, as best I recall, supplied by Alcorn State University. This was done.

By doing this, it decreased our ability to employ at that center fulltime faculty. Obviously, if we had twenty to twenty-five percent of our faculty part-time from another institution, we could not justify bringing in fulltime faculty.

Well, faculty will do things other than teach. They help to recruit students, to develop programs, to advise students, so we were handicapped in the development of the Natchez Center because of that policy of the Board of Trustees, which was based on its compliance objectives.

A little later—Well, I think in the Compliance Plan for Alcorn, there was perhaps a goal of retention or hope of developing in that institution programs which would help [3434] it to attract other race students.

We had a very fine two year technical program in nursing, which had been very successful. Ninety-five percent of the students who finished that program had passed the registry examination for registered nurses.

The Board of Trustees in giving Alcorn the baccalaureate program, gave it also the two year technical program. So, then, at about the same time, the lower disciplined work was given to the junior college, so we had three factors there which undermined the viability of the Natchez program, and eventually we voluntarily closed it.

Q. Do you have any presence in Natchez now?

A. If we have, it would be non-credit or extension courses, and, of course, that has to be coordinated with Alcorn State University.

Q. With respect to your off-campus programs, what is the current status of the University of Southern Mississippi's presence in Jackson?

A. Well, at about the same time that the statewide Compliance Plan was being developed, the Board of Trustees was developing policies relating to these degree completion centers.

The University of Southern Mississippi was allowed to continue to do courses at the University Center in graduate social work, since we have the only graduate social work [3435] program in the State. That was about it.

There were – there were other needs in the State – In the State Capitol that we wanted to meet, but the Board instituted a policy which required any course which any other institution other than Jackson State wanted to offer in Jackson to be approved by the Board office.

You could not just go into Jackson and offer a course. The approval of that course by the Board office and the Board itself depended upon the approval of Jackson State.

If Jackson State offered that course in its catalog, we were prohibited from even almost thinking about going in there. If the course were not listed in their catalog and we wanted to offer it, Jackson State still had veto over our offering that course, whether it wanted to offer it or not.

So, as a result of that policy, those policies, our presence in Jackson is just almost not at all now.

Q. Are those policies in effect today?

A. Yes.

Q. Are there any other limitations on where or when you can offer an off-campus program?

A. We are prohibited by Board policy from offering a course within a fifty mile radius of another institution unless we have the approval of that institution.

Q. Are you offering a course in Jackson in library [3436] science now?

A. Yes.

Q. Who is teaching that?

A. Yes, we have. Our Dean of Library Science took his doctorate at the University of Michigan, which is one of our best graduate schools in library science.

There is a faculty member at Jackson State who was his colleague there.They both have doctorates from that program, and she has been teaching some library science work for us. She then is an adjunct member of our faculty for that purpose, although she is not listed on this list. So we

have offered one or two courses in library science on that basis.

Q. All right. Are there any limitations placed by the Board upon the academic programs that the University of Southern Mississippi can develop or offer on your own campus?

A. Yes.

Q. What are those limitations?

A. It is very difficult to get a new program approved by the Board of Trustees. Part of it has to do with the process that is involved in it and part of it has to do with Board policy in terms of assignment of leadership roles.

Some years ago, the Board of Trustees assigned leadership roles to the various institutions to—the three [3437] comprehensive universities.

Now, it is virtually impossible for us to get a new program approved if one of the other comprehensive universities has leadership in that area, unless that other institution would agree and support our doing it.

I remember I think we were asking for a master of science in public administration, and it seems to me that we wanted to offer it to some State officials. It was a specific program, as best I recall, and the Board of Trustees would not allow us to do that because at that point Jackson State and Mississippi State had a joint program.

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[3438] **TESTIMONY OF DR. AUBREY K. LUCAS**

Q. All right. Now, you mentioned the five percent allocation for people with below the 15.

[3439] Briefly, how does your university choose students for that group?

A. We look at those students whose scores are not 15, who are recommended to us by a department or division in

the university which wants that student and feels that that student can make a contribution to the university generally in the fine arts: music, dance, theater, or in the area of athletics, but I want to hasten to say that in this past year, I think only ten percent of those below 15 were athletes.

We, in the spring of the year, when most of our applications are already in, we begin to review the records of those who are less than 15 and who have been denied. They get an automatic denial.

Then we look at their records and based on their performance in high school and we particularly look at English, becuase grades in English are very good predictors of success. The English ACT score and the English grades in high school are good predictors, so we look at these. We look at the total high school experience. We like to have recommendations from people who know them well, who have taught them, and based on that, we will start with 14's and we admit those 14's first. Not all 14's are admitted, because some of the 14's will not have a high school record that we think will warrant their being [3440] admitted.

Then we go to 13's and then to the 12's, and we won't go much below that until later on in the summer. But in every case, we are looking at what that student did in high school, what the chances are for success with us.

Q. Now, have any of the methods that you have talked about for admission been useful to you in increasing black enrollment at Southern?

A. Yes.

Q. Could you explain that briefly?

A. In looking at our – Well, first of all, we have not admitted our full quota of students with ACTs below 15. We have found that these are exceedingly high risk students.

We, as a comprehensive university, don't have the resources to undergird the efforts of a lot of high risk students. We just don't have the money.

There are opportunities in our State for high risk students. You mentioned – you asked me about other race enrollment increases.

When we review what we have done with admitting students below 15, we find that the majority of the students below 15 over these years, the majority of those students have been minority.

* * * * *

[3441] Q. All right. Dr. Lucas, has the State met your university's needs with respect to providing funds for facilities in recent years?

A. No.

Q. Would you explain that briefly, please.

A. We have unbelievable and critical and pressing space needs which the State has not addressed.

Some years ago, I forget now how long, the Board of Trustees employed an impartial consultant, Dover & Associates, to come into the State and look at all of the institutions and give an analysis under the Board's administration, and to make some judgment about the construction needs at those institutions.

The University of Southern Mississippi and Jackson State University had the most critical needs. We are space stopped.

Particularly, we need an addition to the Cook Library, which is our primary library holding the university's main collection.

We desperately need classroom space and faculty offices. We need space for research on our faculty. We [3442] are slowly but surely bringing in a faculty which can do important and significant research, and we don't have the space for them. We need a continuing education center. We have many, many needs.

Q. Dr. Lucas, as President of the University of Southern Mississippi, are you aware or do you become aware of particular accomplishments or recognitions of your individual faculty or employees?

A. Yes.

Q. Could you describe to the Court just a few, if there are any, accomplishments or special recognition of your black faculty employees?

A. Yes. We just recently learned that Professor Skip Norman in Radio, Television and Film, who is an expert in the history of film has been awarded a very prestigious Fullbright award to study abroad this next year.

Professor Smith in dietetics is Chairman of the Scholarship and Awards Committee of the American Dietetics Association, and as Chair of that Committee, he is responsible for awarding each year over a quarter of a million dollars in scholarships and awards.

Dean Shirley Jones, who came to us as Dean of our School of Social Work from State University of New York, Stoney Brook, has a national reputation as a superb social work administrator. She has received national awards [3443] and is now serving as a member of the Council on Accreditation of Social Work Education, which accredits social work programs in the United States.

Q. Can I interrupt.

Did you say Dean Shirley Jones?

A. That's right.

Q. Is she an academic dean?

A. Yes, Dean of our School of Social Work. She is a tenured professor.

Q. All right.

A. Professor Larry LeFlore in criminal justice. He has just recently completed his dissertation under our faculty development program, whereby we use our – some of our

compliance monies to help him with his graduate work, and he is establishing a national reputation in the area of Juvenile Justice and History of Criminal Systems.

His publishing is immensely significant. He is one of those that though he is an assistant professor, his salary for this next year will be better than many associate professors in the university.

Professor Hompton Williams, who is a Professor of Education Administration, edits the "Journal of Educational Psychology." This is a nationally juried journal where professionals from throughout America read the articles which are submitted and determine whether or not they ought [3444] to be included in that publication.

Now, that publication is listed in the major biographic compendiums in academe.

Q. I don't want to interrupt you, but you don't have to name all of them.

Are you also aware of involvement, accomplishment or recognition of individual black students at your school?

A. Yes.

Would you briefly describe a few of those examples?

A. Yes. By popular vote of our student body a few years ago, a Ms. Reb from Jackson as Homecoming Queen. We have had black students in the Homecoming Court, and this is by election.

Our outstanding athlete Reggie Collier was selected as Mr. U.S.M. That is by vote. We have had two runners-up in Mr. U.S.M. were black, and one who almost achieved it, one of them almost edged out my son for that award.

We have black students who are included in Who's Who in American Colleges and Universities, who are included in the Hall of Fame. We have distinguished military students who are black. We have had a black to be the Vice President of our Inter-Fraternity Council.

We have an important group on our campus which serves as official host and hostesses for the university. Those are called Southern Style. It is a very inclusive group [3445] that they are rigorously selected. They give tours about the campus to prospective students, they help us host events, such as legislative weekend, but more critically they assist with our orientation of students in the summer months.

We think it is important that when other race students come to our campus that they see other race students involved in these important activities.

Another important group on our campus is our resident assistant groups, and those are key undergraduates in our resident halls who are responsible for the supervision of the resident halls under the direction of a Resident Manager. Thirty percent of our resident assistants are minority students.

* * * * *

You mentioned junior college, but I don't think you mentioned whether you get a substantial number of students or not from junior colleges.

Do you get a lot of transfers.

A. We do. In fact, in any given year, we will have as [3446] many transfer students come to the university as new students as we will have freshmen.

* * * * *

[3449] Q. Do you know whether or not the institution has recruited at the graduate schools of Atlanta University or Howard University to identify prospective black faculty?

A. I am sure we have.

Q. Has the institution contacted the Southern Regional Educational Board Data Bank as a source for identifying and recruiting minority faculty?

A. I think we have done that.

* * * * *

[3458] Q. Dr. Lucas, in terms of the exception for five percent that applies to students with ACT scores below 15?

A. Yes.

Q. You testified that the majority of the students who had been admitted pursuant to that provision of your university have been black?

A. Yes.

Q. So do you regard that as an important factor in terms of black enrollment in your university?

A. It is a factor.

Q. Okay.

A. But it is not—You see, if you are talking about over half of a number, I think eighty is what we were allowed. Some years we only admitted fifty, some years fewer than that.

If you were to say all of those students were minority, you are not talking about a large percentage of, say, the fifteen hundred minority enrollment at the University of Southern Mississippi.

It was a factor, a helpful factor, but not an overriding one in terms of the other race enrollment.

Q. Do you consider it important to inform prospective applicants that that exception exists?

A. That is a difficult question. I am not sure we ought to even be doing that. When we review the records [3459] our students admitted on that basis, and we have just done some of that, we find that as an institution, we are not very effective in helping them to be successful and we have all kinds of institutional aids which we bring into play.

Of the students who were admitted with 9 ACTs this past year, I think there were four, and that is about the

most we have had that low in quite some time, not one of them achieved a C average.

When we look at the 11's, 12's, 13's, 14's and even the 15's, more of those students will end the freshman year with less than a C average than those who will have C averages.

Only when we reach a test score of 16 that we find a majority of the students will have a C average, which really is the basic level for success.

So, I have reluctance to advertise, though I think we do—I am not positive about whether that is in our bulletin, our general catalog, but, of course, we have a lot of correspondence with people.

I don't know that we put that in our brochure, but it is generally known, I think, throughout the State. This information is reported to the Board, it is discussed in open session, and it is reported fairly widely in the newspapers in this State that this is a practice.

[3460] Q. Is it your institution's policy not to put it in the brochures that are distributed to the students?

A. I am not sure it is an institutional policy, and I cannot tell you sitting here whether we are doing it or not.

Q. Did you—The documents that you—on which you record have students at each ACT level in terms of grade point average at the IHL-18, is that correct?

A. Well, I don't recall now what IHL-18 is.

Q. You don't know what it is?

A. Well, I think if I saw it, I would know what you are talking about, but—

Q. Did you bring with you the documents today that have that information?

A. No.

Q. I will hand you four documents from your institution that were all labeled in a folder named Board 161.

* * * * *

Q. If you will first look at the one that in fact says Board 161?

A. All right.

Q. It should be on the sixth page of what you have.

A. All right. Is that labeled at the top Apply Carefully?

Q. Yes.

[3461] A. That you have clipped?

Q. Yes. In the left-hand column about half way down, where there is a Number 2, make a composite score of 15 or higher on your ACT?

A. That is correct.

Q. And in the right column?

A. Yes.

Q. The third paragraph from the bottom of the page?

A. Yes.

Q. Does it say a minimum ACT assessment composite score of 15 is required for admission?

A. Yes.

Q. And it is true, isn't it, that one does not find anything as to the exception?

A. I would have to read the entire page.

Q. Well, go ahead please.

A. (Witness responds.)

Q. All right.

A. I don't see it here.

Q. Okay. Is that a brochure that your university has used in terms of recruiting students?

A. I would say, yes.

Q. Okay. Now, there is a second brochure. It doesn't have a number. At the bottom of the page it says, University of Southern Mississippi.

[3462] Do you have this one?

A. Yes.

Q. Okay. Now, the sixth page from the end, sixth page from the end of the document.

A. The one that is clipped?

Q. Labeled Admissions.

A. Yes.

Q. Okay. In the left column, regular freshman admission, isn't there a sentence that says, "A composite ACT score of 15 is required for admission"?

A. I see that, yes.

Q. And in the right column?

A. Yes.

Q. The second paragraph, doesn't it say, "A minimum ACT composite assessment score of 15 is required for admission"?

A. It does.

Q. And again, isn't it the case on this page that there is no mention of the exception?

A. A quick examination indicates that it is laid out very much as the other one, and I see no mention of that.

Q. Okay. I will ask, again, is it the policy of U.S.M. not to mention the exception?

A. It is not mentioned. I don't know that we say that it is the policy not to mention it.

Now, because I have spoken to applicants and their [3463] parents and to school personnel and have informed them about that possibility.

I think you would find that it is generally understood that there is such a policy.

Q. You said your university makes a real effort to recruit students, isn't that right?

A. Yes.

Q. And these booklets are a part of that real effort?

A. Yes, and–

Q. You have these booklets because the catelog is four hundred and two pages, and it is good to have booklets like this just on recruitment?

A. Right, and we think this gives more than the catalog.

Q. Was your answer to my question yes?

A. Give me your question again.

Q. My question was, do you have booklets like this because the catalog is four hundred and two pages, and you think it is good to have booklets like this that focus on recruiting students?

A. Yes, it is good to have booklets such as this for recruiting students. We don't have them simply because the catalog is so thick. That is one factor.

Q. Now, I give you another document.

* * * * *

[3465] Q. Does this contain the cover or copy of the cover and two pages from the catalog?

A. 1986/87. Yes.

Q. Now, if you look at the second page of this, toward the bottom, is there a sentence that says, "A minimum ACT composite score of 15 is required for admission"?

A. This is correct.

Q. All right. Now, if you – There is on this page three paragraphs following that?

A. Yes.

Q. Which don't refer to the exception?

A. Okay.

Q. My question was, on that page, are there three paragraphs that don't refer to the exception?

A. That is correct.

Q. Okay. Now, on the top of the next page, there is a paragraph. Is it not correct that the exception is referred to in the third sentence?

A. Yes.

Q. Okay.

A. It is in the catalog.

Q. Now, is the exception referred to there pretty much my quoting verbatim the design of the exception as it appears in the Board of Trustees' Admission Standards?

A. I couldn't answer that without looking at the Board [3466] of Trustees Admissions Standards.

Q. Well, there is a reference here to—it says in part in identifying the number of exceptions, it refers to, quotes five percent of the previous year's freshman class enrollees or fifty students for summer, fall and spring terms to accommodate talented and/or high risk students.

Do you recall that as being a part of the way that the Board phrases it?

A. It appears to me to have similar wording. I would not want to swear it is identical with Board policy, but from my recollection it is certainly in harmony with Board policy.

Q. The fifty students—

A. Makes it sound as though it is a Board policy.

Q. The fifty student provision has never had any relevance to your university—

A. That is correct—

Q. Excuse me. The reporter can only get one of us at a time.

A. I am sorry.

Q. The reference to the fifty students has never had any relevance to your university during the time of your tenure there, has it?

A. That is correct.

Q. Doesn't that convey to people who read this provision, doesn't it suggest that you have fewer provisions in the [3467] exception for your university than you, in fact, have by including the fifty?

A. It may, but I can assure you that that's not intended.

Q. Going back to the previous page, where the sentence appears, "A minimum ACT composite score of 15 is required for admission."

Has that been a literally correct description of your admission practice in any year that you have been at the university?

A. A literal?

Q. Yes.

A. By that you mean, without exception?

Q. Has it been correct in any year that you have been at U.S.M. that only students who had a 15 or higher were admitted?

A. No, that is – No, that has not been the case.

Q. Don't you think that there is a danger that someone reading the catalog who had below a 15 having read that sentence without any qualification would stop without reading further to the three paragraphs or two sentences to find the exception?

A. Let me make it clear that we do not encourage students with less than a 15 to come to the University of Southern Mississippi. That is why we have, to my knowledge, never fully used our five percent.

[3468] Q. Do you think that that would be clearer if it read, in general, a minimum ACT composite score of 15 is required for admission. However, U.S.M. might also admit approximately a hundred students whose ACT test scores are from 9 to 14 to accommodate talented and/or high risk students?

Do you think that that would be a clearer way of expressing that thought?

A. Well, I would argue with the one hundred. I don't think we have ever had that many. We have never admitted that many.

I would probably not want that statement because I think it would encourage those with less than a 15 to think

that their admissibility was a good probability.

* * * * *

[3469] Q. Would you agree that the average ACT scores for your black enrollees have been lower than your average ACT scores for your white enrollees?

A. Yes.

Q. You said that nevertheless retention has been better in terms of black enrollees?

A. Yes.

Q. Doesn't that –

A. Yes.

Q. Doesn't that indicate that ACT scores tell you something different in terms of ability to continue in your school for white and black students?

A. Well, you see, my testimony also is that when you get below a certain point on the ACT, the likelihood of success is considerably decreased.

Q. Okay.

A. Regardless of race.

Q. Did you remember my question?

Do you think you have answered my question?

A. If not, give it to me again, and I will try.

THE COURT: Would you like the question read back?

[3470] MR. PRESSMAN: Yes, sir.

(Whereupon, the last question was read.)

THE WITNESS: I am not sure that it does. I think there are other factors that work – that are at work that I would like to discuss.

First of all, I was talking with a high school librarian just this week-end about the fact that our black students have a better survival percentage than our whites, and I asked her why?

She said she thinks that our black students are not taking for granted that they are going to participate in the

good life, that they will have economic sufficiency without a college education.

They bring a higher level of motivation. Generally, our white freshmen assume that this is going to be their life.

Another factor involved here is that a larger percentage of our black students live in resident halls, a larger percentage of our freshmen than do our white freshmen.

The research clearly indicates that students who live in resident halls have higher grade point averages than those who do not. There is a rich, secure, safe nurturing environment in the resident halls which we think contributes to this factor that black students have a better retention rate and better graduation rate.

[3471] We also have a larger percentage of our black students who are involved in work on campus; that is, black freshmen than our white freshmen. The research also indicates that when a student can identify with a group, whether it is a Greek organization, a professional organization, a religious group or even be involved in the work space—work place with other people, his or her survival rate is considerably enhanced.

So, there are many factors at work here which we think can account for the survival of our black students and their continuing to graduation.

Q. Didn't you just tell in substance that there is a lot—There are a lot of factors in addition—In addition to one single composite score on the ACT that are related to whether people can succeed, black persons can succeed at your university?

A. And whites, too.

* * * * *

[3472] Q. Let me give you a copy of United States Exhibit 1, which is the Plan of Compliance.

If you will look at the third page which has Roman II at the bottom.

(Document passed.)

MR. PRESSMAN:

Q. Does this indicate as of this time May 28th, 1974, Alcorn State University had twenty-eight baccalaureate degree programs?

A. That is what is given here.

[3473] Q. All right. On the next page, you—does it indicate at the University of Southern Mississippi, a hundred and six baccalaureate degree programs, seventy-three masters programs, thirty-seven doctorial programs, and twenty-seven specialists programs?

A. This given here, yes.

Q. Doesn't this reflect that as of this time, that in Southern Mississippi there was a racial distribution of the programs among universities?

A. I could not say that.

Q. Why?

A. Because I could not say that this was here because of racial makeup. I cannot say that.

Q. You think that this could have come about through factors other than race, this kind of distribution of programs?

A. It could have.

Q. And in your opinion, did it?

A. I think it came about because of demand and because of location.

If you will look at Delta State—I guess this is what, 1974. The baccalaureate programs of Alcorn and Delta State are similar.

Q. Do you notice Delta State has some other programs?

A. Yes.

[3474] Q. Thirteen master's programs and four specialist's programs?

A. That is correct.

Q. Well, you just referred to location?

A. Well, you see, you have to understand that Delta State and Alcorn have similar situations in that they are both located on the western edge of the State.

The river serves as a barrier. They have no State beyond them to the west. Population from those other states cannot readily get to them. There is no bridge at Alcorn or no bridge at Cleveland.

The point I am making is that these two institutions have not been able to develop in terms of size because of location.

Q. Although you just agreed that this reflects Delta State had seventeen programs above baccalaureate, right?

A. Yes.

Q. You refer to location as a factor?

A. Yes.

Q. All right.

A. I don't say that location had—Determined that Delta State had graduate work and Alcorn did not.

Q. Okay. If you would look at these pages here, let's see. It shows thirty-eight doctorial programs at Mississippi State University on Page 2?

[3475] A. Yes.

Q. And twenty-eight doctorial programs at the University of Mississippi on the top of Page 3?

A. Yes.

Q. And thirty-seven doctorial programs at the University of Southern Mississippi on Page 3?

A. Yes.

Q. And on Page 2, Jackson State University, it shows no doctorial programs?

A. Yes.

Q. And Jackson State is located at the Capitol?

A. Yes.

Q. Do you see a location explanation for that?

A. No, I don't.

Q. Do you see an explanation other than a racial pattern of distributing doctorial programs?

A. No, I would not say it is a racial pattern. I would say—it may well, very well have something to do with what the institution wanted to be and wanted to do.

What its leadership wanted it to be and what it wanted to do, and what its coinstituency, its faculty.

Q. And this document is dated May 28th, 1974?

A. Yes.

Q. And your view is that the reason—Your view is that [3476] the reason Jackson State prior to that time did not have any doctorial programs related to what its leadership wanted to do?

A. I am saying that would be a factor.

Q. And your testimony would be that race played no role?

A. I cannot say that.

Q. All right.

A. Do you think it played part of the role?

A. I am not going to speculate as to what role it played.

Q. Did you think that your testimony about what the leadership at Jackson State wanted was speculation?

A. In all honesty, I may have to admit that some of it was.

* * * * *

Q. If you would look at Page 13 of the Plan of Compliance, U.S. Exhibit 1.

A All right.

Q. Now, at the bottom of Page 13, numbered paragraph 3 and at the top of Page 14, I want to read that paragraph.

"Special efforts, along with scholarship awards are to [3477] be made in recruiting qualified graduate students of the other race to be trained and employed as future teachers at institutions of higher learning in Mississippi. During the academic year of 1974/75, the three universities with doctorial programs may award, if possible, twenty graduate assistant fellowships to qualified students of the other race. These fellowships are to be used to train future terminal degree teachers, each of the three universities which offer programs only through the master's and educational specialist's degrees may award possible ten work study fellowships to graduate students of the other race. These awards are to be made to students who are committed to continuing educational programs and teacher preparation until they are interminable or educational specialist's degrees.

Each year a total of ninety new minority students are anticipated in this program. By 1980, the seven year accumulation will provide a potential of six hundred and thirty additional minority faculty.

During the seven year term of the Plan, a substantial amount of dollars will be invested in additional minority faculty prospects. The Board will make a special request to the 1975 Mississippi legislative session for three hundred and forty-five dollars (sic) to underwrite this program during the 1974/75 school year.

[3478] Mr. Chambliss advises me that I read three hundred and forty-five dollars instead of three hundred and forty-five thousand?

A. Yes.

Q. Okay. Has there been compliance with the substance of what I read?

A. First of all, I don't believe the appropriation specifically for that purpose was a reality.

I think – I believe there was a good faith effort to accomplish this section without the appropriation, but I rather doubt that any of the institutions achieved that goal.

Q. This was a Plan to develop from programs, black undergraduate students, persons who could be faculty persons at universities in Mississippi, is that right?

A. Well, that is correct. And we were very successful with some of these.

Q. But you have referred to three persons?

A. We have had more than that. I was speaking specifically of business, because there is such a critical shortage of faculty in general without regard to race in business.

We were able to assist three to get through the doctorate, not at our institution. We really don't want students earning the doctorate at our institution and teaching there, because that is academic inbreeding, and [3479] we don't like that, so we were able to assist them to go away, and we have done that with other minority students.

But that didn't –

Q. But that didn't approach this goal, did it?

A. Of twenty –

Q. Yes.

A. Well, I cannot recall how many graduate fellowships were awarded to other race students in that year. I don't have those data, but I would rather doubt that it was twenty. That goal was presupposed on a special appropriation.

Now, which did not materialize.

Q. Okay. Now, you talked about limits that the Board of Trustees placed on new programs at institutions.

A. Yes.

Q. And you testified about that, right?

A. Yes.

Q. And you testitified that it was very difficult to get a new program approved?

A. That's correct.

Q. Was this increasingly a problem as the 1970's unfolded and into the 1980's?

[3485] * * * * *

Q. Do you consider that having black staff is important to the ability to recruit black students to your campus?

A. Yes.

* * * * *

[3490] **TESTIMONY OF DR. FOREST KENT WYATT**

* * * * *

Q. Dr. Wyatt, would you describe your educational and employment history to the court, please.

A. I graduated from Cleveland High School in Cleveland, Mississippi, and I graduated from Delta State Teachers [3491] College in 1956. I graduated from the University of Southern Mississippi, with a Masters Degree in my major area of mathematics in 1960. I'm sorry. Yes, 1960. And then I received my doctorate in administration and supervision from the University of Mississippi in 1970. And I have done advanced study at Harvard for one summer since then.

My employment, after graduating from college I taught mathematics and coached in Mobile for four years and then I returned to Cleveland where I coached and taught as principal in the Cleveland Public School System.

In 1964, I was employed by Delta State as alumni secretary. In 1969, I was named assistant to the president and I remained in that position until 1975, assistant to Dr. Ewing and Dr. Lucas, two different presidents. In 1975, I became President of the Delta State University.

Q. And are you currently the President of Delta State University?

A. I am currently the President of Delta State University.

* * * * *

[3493] Q. Dr. Wyatt, what are the Delta State's policies and objectives and practices with respect to recruitment of black students?

A. Well, Delta State wants to recruit all students who meet our admission requirements and we are especially diligent in recruiting minority and black students. We have a black admissions officer who relates very well with blacks and does a good job in that area. We also have—all of our publications that we use in recruiting depict blacks in that publication.

In addition, we call on all the predominantly black schools and predominantly white schools and junior colleges in our areas, so those are some of the ways that we recruit minority students as well as majority students.

Q. How long have you had these policies and procedures at Delta State?

* * * * *

[3494] A. Well, since I've been President, and, in general, the affirmation that we're going to recruit all students that meet our admission requirements at Delta State.

Q. Have you had any correspondence or communications from the Board of Trustees of State Institutions of Higher Learning with respect to recruitment of black students?

A. Yes, we have. We have been instructed by them that we should recruit black students that meet our admission standards, and we have passed that down through our regular chain of command at Delta State and all other departmental people, and certainly our admissions officers and administrators know that this is what we want to.

Q. All right. Are there any instruments or documents that you consider to be a manifestation of the Board policy?

A. Well, the Compliance Plan of 1974 would be the plan that came to us that we helped at the local institution development. It came back to us from the Board informing us that this is the Board policy and that we were to follow it, which we do, and—well, would you like for me to [3495] explain that?

Q. That explanation is sufficient for now, thank you. Could you tell me how many black students you've had at Delta State in recent years?

A. Usually, we recruit—I would say we have somewhere in the neighborhood of six hundred to seven hundred black students on our campus, for the last several years somewhere in that range, and since 1978 or so.

Q. Okay. And what kind of percentage does that come to?

A. Okay. In the spring and fall semesters, the normal term of the university, our range during this period of time would be around twenty percent, and up to in the summertime and up to approximately up to about thirty-five per-

cent black students on campus. Our summer school enrollment is—has more blacks because of the teachers in our area who come back to get recertified and take courses at the graduate level.

But, in general, I would say that our regular student enrollment is in the low twenties, and in the summertime our regular—our enrollment would be in the low thirties.

* * * * *

[3497] Q. Are there any specific policies or techniques taken by Delta State with respect to recruitment and hiring of black faculty members?

A. Well, we are aware and all our department heads are [3498] aware that it is our intent to have more black presence in our academic areas, and if the credentials, if the evaluation of the individuals that we receive, if they are within the same range, then certainly we're going to select the black faculty.

In addition, we, at times, will contact black institutions that we know of that have graduates in that particular field to see if they have applicants or candidates for the position.

* * * * *

Q. Do you have any particular affirmative action policy or people who are charged with duties toward affirmative action and hiring?

A. Yes, we have an affirmative action plan. The Director of Personnel is our Affirmative Action Officer and [3499] she reviews all these advertisements that go out to make sure they meet our plan. She's the one that determines where these will be advertised.

* * * * *

Q. Yes. Are you aware of any communications or policies by the Board of Trustees of the State Institutions of Higher Learning to your institution regarding increasing black faculty or other employment?

A. That was part of the Compliance Plan was that we were to meet the goal we had established for black presence on our campus. And we certainly recognize that that is what our Board has instructed us to do and we at Delta State have passed that information to each of our department heads and deans and those who are in employment positions at the institution. That's what we expect of them, and I think they do it to the best of their ability.

* * * * *

[3504] Q. Okay. Do you get very many transfers to Delta State?

A. We do. The former President I mentioned, Dr. Ewing, came to Delta State as President from Co-Lin Junior College. He had been President there for over twenty years. And he attracted and recruited a lot of good junior college transfers to Delta State. So since nineteen—late 1950's we have been recruiting junior college students very heavily.

In fact, our junior college is also significantly larger than our freshman class because of the influx of junior college graduates. And we recruit the junior [3505] colleges very heavily.

In fact, Coahoma County Junior College which is a predominantly black junior college provides us with our third largest number of transfer students from junior colleges.

Q. Another thing you mentioned was I think you called it a high risk group, allocation for students with below 15 on the ACT. How does Delta State choose the students that can attend the institution in that high risk category?

A. When we receive from the American College Test a printout that shows you, say, that a student makes below 15, 12, 13 or 14, we will write that student and tell them that we have a limit of so many students that may be admitted and that we request that they get to us their transcript from the high school. They have—we usually ask them to have the principal or counselor write a letter to us, and if we find that student is in that group we're seriously considering to be admitted with a 14, 13 or 12 ACT score, we will usually call and get some other input from members of that student's high school about their study skills and that type of thing.

* * * * *

[3506] Q. And how many of your available slots do you fill?

A. We fill right at fifty every year. We never go over the amount established for us, but as close to fifty. Sometimes we'll have a student that will drop out or not show right at the last few minutes and so we might have forty-nine or something like that, but usually we fill fifty.

Q. Have you found any of these alternative access means to be of use in enrolling black students to Delta State?

A. Well, yes. Of that number of fifty, this year I believe sixty percent were black students.

* * * * *

[3509] Q. Earlier on, you mentioned the core curriculum requirements for high school students. Have you noticed or has your institution seen any effect of the core curriculum on students enrolling at your University?

A. The core curriculum started about four years ago, and we saw the biggest increase in ACT scores from our high school graduates this past year that we had ever seen. And I would have to give our Board of Trustees primary credit for that increase because of the requirements that they are placing on students to go to college; therefore, the public schools started requiring their students to take those courses, and it brought up their scores on the American College Test. So, yes, I think it's been a—certainly been a positive effect on it.

Q. Now, as President of Delta State, are you aware of the extent of involvement or accomplishment of black students at your University?

A. Yes, I am.

Q. Would you please briefly describe that extent to the court.

A. We have had black students involved in just all facets of the institutions, and certainly on the athletic teams. And some of our sports have more blacks than we do whites on the team. In the band we've had blacks, majorettes have been black, our drum major has been a black. [3510] In our performing group that goes around and entertains at different schools and civic clubs, we've had a black. It's called the Rennaissance Performing Group. We have blacks in all facets of our student government association, from the student senate to the student court. We have blacks who worked on the newspaper and on the annual. We have black students that have been

cheerleaders. We have black students who have been on our modeling squad, both male and female blacks on the modelling squad. We have blacks on our academic committee. We have black students that serve as resident assistant in the dormitories.

In fact, if you visited our campus today, you would know that we were a fully integrated institution because we have blacks fully involved in all aspects of the institution.

* * * * *

[3539] Q. Now, you did have a program at one point where students could enter Delta State during the summer and would – and then – well, students with less than 15 on the ACT, they could enter in the summer, and you would evaluate their performance?

A. Right.

Q. And if they did well, they would be admitted?

[3540] A. Right.

Q. You no longer have this program?

A. No longer have that program.

Q. Why did you discontinue that program?

A. Because the Board established admission policies for all the eight institutions, and that was not part of it.

Q. Okay. You don't use this particular program for students who score less than 12 on the ACT – now – strike that.

Now, I think you stated at one point you could admit five percent of your – five percent of the entering class could be admitted even though they might score less than 15 on the ACT?

A. Well, that's five percent or fifty, whichever number is the greater, and fifty is always greater for us.

Q. And has there ever been a time when you could admit more than fifty students with less than 12 on the ACT?

A. Less than 15 or less than 12?

Q. Less than 15.

A. Not since the Board guidelines went into effect. Before the Board guidelines we could take as many as we wanted to who coiuld work their way in through the summer schedule session.

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TESTIMONY OF DR. THOMAS MEREDITH

[3546] MR. STEPHENSON: Your Honor, we call Dr. Thomas Meredith.

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DR. THOMAS MEREDITH

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[3547] Q. And your place of employment?

A. University of Mississippi.

Q. And what is your job title with the University, please, Dr. Meredith?

A. Vice Chancellor for Executive Affairs.

Q. Would you relate briefly, please, sir, your formal education experience since high school.

A. Yes. I received a BS degree from Kentucky Wesleyan College in Owensboro, Kentucky, a Masters Degree from Western Kentucky University in Bowling Green, an EED Doctorate in Education from the University of Mississippi.

Q. When did you obtain your doctorate, please, sir?

A. In 1971.

Q. Woud you provide the court also with a brief overview of your employment history following the securement of your BA and MA degrees.

A. I taught public schools in Kentucky for six years. During that time I obtained a Masters Degree, then came to the University of Mississippi for two years to work on a

doctorate, taught while I was there and worked in the Bureau of Institutional Research. Left there to go to Illinois for [3548] two years as a principal and went to Indiana for a year as a principal, and then came to the Board of Trustees as Academic Programs Officer in 1974.

And during this period of time, I was teaching as adjunct professor for the University of Indiana while in Indiana, and then ten years while at the Board of Trustees from 1974 to 1984, I taught for Jackson State and Mississippi State and also adjunct professor for the University of Mississippi.

Q. Were you a principal of a high school?

A. Yes, sir.

Q. Would you relate, please sir, your responsibilities as an academic programs officer with the Board of Trustees?

A. It covered a wide variety of area. I was the first academic officer they had had, and that had some background in higher education research and so forth, and that job encompassed developing academic programs, inventory, in other words all items dealing with the academic areas, including the accreditation, development of new programs, evaluation of programs. Just a whole variety of items dealing with the academic area.

Q. Did your responsibilities also include monitoring and supervision of institutional admissions standards?

A. Yes, sir, it did cross over into admissions standards.

Q. Did you mention that you also served as associate [3549] director for programs and planning?

A. No, I did not. I'm sorry. After serving as the Academic Programs officer, around 1980 or 1981, I became the Associate Director for Programs and Planning.

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[3550] Q. Dr. Meredith, Let's return to 1974, if we could, please, sir, when you joined the Board of Trustees staff. What were the admissions standards for the Institutions of Higher Learning at that time?

A. The three comprehensive universities, as I recall, had a gentleman's agreement of 15 composite score on ACT. I'm really a little unclear as to Delta State and MUW's status relating to that. Delta State followed that standard to some extent, and I believe MUW did, as well. But the agreement, as I remember, was twenty-three comprehensive universities.

The three historically black institutions had no minimum standard at that time except that imposed by the Board which was fifteen and a half units, and then you had to also have taken the ACT but there were no scores required.

Q. Did there come a time when the Board considered modification of these standards?

A. Yes, sir, shortly after my arrival, the Board of Trustees began to look at that question, and that would have been 1975-76.

Q. Could you tell the court, please, sir, how the issue arose?

A. Well, there was a number of items, I think, at that [3551] time that caused that issue to come up. There was a concern across the country as well as in Mississippi over the lack of quality of graduating seniors from colleges. I think a review of the literature at that time will discover quite a large national concern over that; that students couldn't write as well, they couldn't read as well, their computation skills weren't as great. So there was pretty strong national concern at that time over that.

There was employer's concerns as various industry and businesses across the country began to complain about what they were getting. There was concern from our Board of Trustees having been though the enrollment boom of the sixties and early seventies, with a question of such a great influx of students and such a rapid time period, was the quality still there? Because we just had this major impact of new students.

University personnel were complaining about the poor quality students they were getting, the under-prepared students that were coming to college. And I became aware of that.

Part of my job at the Board of Trustees was to audit enrollment reports of student credit hour reports which is the basis for the funding. And I was on every campus every semester, and the complaints were constant about the poorly prepared students that were coming to college. [3552] We also saw a couple of other things happening at that time that the Board of Trustees became aware of. One, particularly at our black institutions, there was a tremendous loss in enrollment between the freshman and sophomore year. An awful lot of significant enrollment at the freshman year and, yet, you look at the sophomore year and half would be gone. So it gave some indication that the quality of student coming in was not capable of doing college level work.

And I guess the other item that was kind of yelling at us at that time, and it went on for some time after that was, particularly again, at our historically black institutions that there were a number of students graduating in teacher education and they had to take the NTE and less than half were passing the NTE.

Now, that's significant in terms of the fact that the NTE required score at that time for this State was eight fifty, and eight fifty was something like, that I recall, the twelfth percentile, which meant that eighty-eight percent of the students in America scored better than that score on the NTE, and yet half of our students from the black colleges were failing that test.

And, of course, the Valley was struggling at that time with its nursing program and something like a twenty percent passing rate on the nursing licensure exam.

[3553] So all of those things were rolling and happening, and it caused the Board of Trustees to say, wait a minute, what's going on? Are we getting the quality student that we need to have at an institution of higher learning? These are universities. Are we doing the right thing?

Q. Did the Board staff take steps to address these issues and concerns, Dr. Meredith?

A. Yes. We, as has been documented, the State of Mississippi—or the Board of Trustees required that all students entering the eight universities must take the ACT, as we knew we had a standardized arena to get some comparisons. We began to read again the ACT literature, study all they had to say about entrance exams and so forth and where the ACT fit in there. We began to have a number of conversations with the folks from ACT at that time. We looked at the norms involved. We began to survey the institutions to get some picture of the kinds of students we were having to—that were being allowed into the institutions. Up until that time since there were no standardized scores required to get in, we weren't gathering information from the institutions on the scores of entering students, so we surveyed them to find that out.

Q. What did your survey reveal, please, sir?

A. We surveyed and asked for information for the fall of 1973, 1974 and 1975, and we were distressed by what we found. [3554] With the large numbers of students who were admitted to all of the institutions, all eight, with terribly low scores, scores as low as ones and twos, as a matter of fact, out of a possible high of thirty-five on the composite. That was very distressing.

The numbers were—for example, I remember Jackson State in one year had twenty-eight students with five or below, and this caused us great consternation, as you can imagine.

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[3556] Q. I believe you mentioned, Dr. Meredith, that the Board staff also consulted with the ACT with respect to—

A. Yes, sir.

Q. —the review conducted. Would you relate some of the things you learned or the nature of those discussions?

A. Well, ACT felt very good about the possibility of their tests as a measure that we might use to give us some indication whether or not students might be successful. Obviously, nothing was absolute.

We looked at that, we looked at grades, we looked at a number of things to try to reach some basis for setting a standard. I can't remember all the literature and things we went through at that time and all that we went through with ACT, but all of that conversation led us to our final resolve.

Q. And what action did the Board take following the staff review?

A. The Board, in May of 1976, passed its first policy [3557] along the line. It said beginning with the fall

registration of 1978-79, that no university was to allow a student in with less than a nine on the ACT. And it also stated that if an institution had a requirement higher than that, that it had to maintain that requirement. That was the first action.

Q. What was the Board's educational rationale for this action, Dr. Meredith?

A. Well, there were several items, I guess. One in particular, we knew that from the data available at the time that ninety-five percent of the students in America who took the ACT scored above nine, and that was a pretty significant figure. So we knew that nine was low.

And it's quite—as we began to look at each of the particular scores and to see what would survive, we had spent an awful lot of time studying the fifteen. Fifteen had been the gentleman's agreement. ACT had given us a very clear indication that 15 was a reasonable standard to expect from students if they were going to be successful in a university setting. If you were 15 or above, you had a reasonable chance of success. As you fell below 15, your chances for success fell dramatically.

We looked at all that kind of data. We looked at our survey data to see what might survive. We looked at a 15 and—and we looked at the data from Jackson State and [3558] Alcorn and Valley, and we said, if we go to a 15 we're going to lose seventeen hundred freshmen at Jackson State and that's way too many. Here we are trying to do things to raise quality and we're trying to do things to preserve our black institutions, and you can't go to a 15 because that would take out seventeen hundred potential students at Jackson State. That number was five hundred at Alcorn and Vally, and those numbers were too large.

So we began to go down the scale. What about 14, could

we go to fourteen? The numbers were still too large. And 13 and a 12, and we just worked ourselves down the line, until we finally reached a bottom line of nine which would be a figure that we felt like in our State we could live with. It was a figure that was just terribly, terribly low, if you looked at all the national data and also the data for our State.

The average score in our State at that time was 15 for all students who took it whether they were going to college or not. And here we were saying you could get into the universities in this State with scores as low as nine. We just, I guess, in good conscience, we couldn't go any lower than nine, but also in good conscience in those initial stages, we felt we had to go down as far as nine. And that ended up being the recommendation of the Board of Trustees.

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[3559] A. Okay. Board Exhibit 180 entitled, Rationale of Board of Trustees in Adopting Minimum ACT Score Requirements for Admissions, listed ten items that were prepared at that time, serving as a basis or a rationale for the decision that was reached.

Q. Did you mention item ten in your discussion, please, sir, just a minute ago?

A. No, but that serves constantly and that's an important element and that's why it's listed as a summation element here.

[3560]The Board of Trustee had some comfort in realizing that to have a cut-off score in the State of Mississippi on ACT was not denying young people of the State access to higher education. The State of Mississippi is blessed with having one of the finest junior college systems in the country. I guess probably only Florida comes close to that.

An excellent junior college system.

Any student not meeting the admissions requirements of public universities in this State had access to the junior colleges because their admissions were open, and so no one was being denied. And, of course, once one were to go to a junior college, pick up twelve hours, then they could come in—with a C average, and they could come in as a transfer student to the senior universities. So the alternatives were not closed, by any means.

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[3562] Q. Dr. Meredith, at this time why didn't that Board adopt high school grades as a component of the admissions standards?

A. I received a lot of discussion on the Board staff at that time, but again, a review of the literature at that time period will show monumental concern not only in our State but nationally with the subject of grade inflation. Grades simply weren't meaning as much as they used to mean. They weren't a true reflection of what students had learned.

Grade inflation means that you were giving students a better grade than what one might expect for the amount of information that's been learned. That was a problem in our State. It was a problem nationally. So as the Board staff and the Board of Trustees considered all of this, they just decided to go with a uniform standardized test score, testing procedure and leave grade point average out of it at that time.

Q. Okay.

A. And I should say also just as a kicker on the back of that, that Act at that time told us that they felt very good about the ACT assessment by itself; that you could

use grades and that might help a little bit, but grade inflation was a problem. But that they felt very good about the test being used alone.

Q. Was there any concern with respect to the [3563] comparability of grading within the State?

A. Yes. We, unfortunately, have quite a wide variety of schools, we're a rural State. And the difficulty, of course, as I think the State Department of Education will back this up, particularly that period of time, the difficulty, of course, is from one part of the State to another part of the State, vary tremendously, particularly in the sciences. There would be schools offering chemistry with no labs, white and black schools, not designated one way or the other, and to the point where we didn't feel we could get a good enough picture using grades.

Q. Following this action in May of 1976, Dr. Meredith, what was the next major Board action with respect to admissions standards?

A. Next was in February of 1977 and the Board of Trustees addressed the doctoral granting institutions, that would be Ole Miss, State and Southern, and stated that those three institutions had to use their 15, but that they were allowed to take in students with a 12, 13 or 14 for the summer session of 1977 and if those students came in with those three scores, maintained a two point oh, then they could come on in the fall, but if they didn't maintain a two point oh, they could not.

Q. What was the educational rationale for that action?

A. The institutions pointed out to the Board of Trustees [3564] that there were an awful lot of students, minority students particularly, who had scores of 12, 13 and 14 that they were missing out on, and they wanted the

opportunity to give those students a shot at a comprehensive university.

Q. And could you continue, please sir, with respect to the next major Board action related to admissions standards.

A. The next major action occurred in October of 1977, October 20th, when Dr. Walker Washington, President of Alcorn State, initiated what I thought was a monumental move on behalf of Alcorn State. He came to the Board of Trustees and said, "I want a statement to be made about Alcorn State. I want it to step forward."

Because now we're talking about Jackson State and Valley and Alcorn, all operating under a nine minimum score. And Dr. Washington said, "I want to step forward and start raising the scores at Alcorn on my own, my own initiative, and start moving those forward," to the point where he wanted to move those up two a year, and I think, by 1980, he would be at 15.

He proposed two conditions on that with the Board of Trustees. He said, "First of all, I'd like a high risk factor of ten percent of my total institutional enrollment," which would be kind of large because he had twenty-two, twenty-three hundred students at that time, and he wanted to allow in each year two hundred twenty, two hundred and [3565] thirty students who had below that score but no lower than a nine, whatever standard he was at.

And then secondly, he asked the Board of Trustees, "If I take this monumental step forward, I would like for you to tell me that you—by taking that step forward, I may lose some enrollment because this is such a big step, and I want you to tell me that you won't let that affect my funding for a couple of years." And the Board agreed to that.

Q. Could you relate specifically the step scale approach proposed by Dr. Washington?

A. Yes, sir. He wanted an ACT score of 11 by the fall of 1978, 13 by 1979 and 15 by the fall of 1980.

Q. And what was the Board action with respect to the request again, please, sir?

A. It was passed enthusiastically.

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[3566] Q. What was the next Board action, sir, with respect to admission standards?

A. In December of 1977, the Board of Trustees passed a policy that allowed all eight universities to have a floor of nine with a five percent high risk. In other words, the comprehensive universities had a requirement of 15. They were now allowed to go all the way down to a nine with a five percent quota.

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Q. And what was the educational rationale for that action, please?

A. That there were students—and lots of discussion had [3567] gone on in between here that there were students capable of doing university level work even though their score did not indicate that they were capable. That there were other factors that you had to look at. These students would be exceptions. They would be outside the norm. And it may be that—may be high school grades were outstanding but their score was terrible. It may be that they had strong leadership ability and had shown bright glimpses of academic promise during the high school career but never fully blossomed and maybe felt like now this is someone who has a twinkle in their eye, if you will, someone who has a shot at being successful. So you're going to take a chance, a high risk student. It may be a potential concern violinist who has not been a great

student but has been a so-so student and has scored a nine or a 10 or 11, but this is an opportunity for them to fully develop their skills. Just a wide variety of things like that might be considered.

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[3571] Q. Okay. Were there other actions taken in December of 1979 related to admissions?

A. Right. That's when the Board of Trustees initiated its developmental studies program.

Q. What do you mean by developmental studies?

A. That's a euphemism for remedial studies. The institutions, most of the institutions, had in place at that time a remedial studies program which meant as you received students who were absolutely under-prepared in various disciplines, that you had to have in place on a university campus courses that were remedial in nature, that would take a student at the level of high school math and bring them up to a point where they would be ready for college math. The same thing in English and the same thing in reading.

[3572] Q. What was the educational rationale for implementing a developmental studies program?

A. Well, the Board of Trustees realized that even with the ACT requirements, which was terribly low, that they were still getting under-prepared students. The faculty were complaining. We had the same problem of poor graduates. That conversation was still going on. We had students getting into college, trying to take college level courses, and they just weren't prepared.

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[3573] Q. What was the next major action by the Board with respect to admissions standards?

A. July of 1982, the Board of Trustees passed course requirements for entrance into the universities.

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[3574] Q. What circumstances led to this action by the Board with respect to course requirements?

A. Okay. There were a number of things. Even with the ACT requirement, again, too low, even with developmental studies trying to prepare these young people to get a university level education, we were still having the problem of students moving through the universities under-prepared. They weren't prepared for a university level education. We were experiencing budget cuts at the time, dramatic budget costs. We had limited resources. We were spending a million dollars a year for developmental studies or remedial work. And when you have the kind of budget we have in higher education, that kind of expenditure [3575] is devastating, to take care of young people who have not had the proper background.

As a matter of fact, a number equivalent to one-third of our freshman enrollment each year was in—were in remedial courses, and that was just too much.

We had the constant problem of professors complaining about the poor quality of the students that were coming in. And one of the things that happens in higher education, happens in all levels of education is that because educators are humanitarians, I guess. I'm not sure of the answer, but if you give me enough students who are under-prepared, I will start to lower my standards to meet what I have.

I'd like to think, but I know it's not true, that universities will maintain standards right up here no matter what comes at them, and they will just throw them out the door when they don't make it.

But the fact of the matter is that we'll all gravitate to the

level of students we are trying to address. It just happens. We don't like to think it happens, but it does. We all admit it.

Counselors and principals were terribly upset with the universities and had been for quite some time. Their basis premise or their basic statement to us is this: You don't require a college prep route of courses to go to [3576] college, and if you don't require it, we can't make them take in.

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So the Board of Trustees, in a conscious move, said we're going to require these things to get in universities in this State, these course, this wide array of courses beginning four years from now. It gives you time to do it. We're not saying we're going to cut somebody off right now. It gives you time to do it. Now, high schools, make some changes. Start offering these courses if you're not now. You've got time, get them in place. Get these young people prepared. The high schools are going to have to say to the junior highs, strengthen what you're offering, and it goes on down the line. We believed in that strongly.

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[3582] Q. Dr. Meredith, you've related the rationale behind the Board's implementation of course requirements. Have you examined at the University of Mississippi the level of participation in developmental education following the Board imposition of the course requirements?

A. Yes. I had this run-off when I was notified that I [3585] was being called and what one of the topics would be, and I had it run-off beginning with 1980 on through this past year, showing the number of students that we've

been teaching in each of these areas, and that's about it.

Q. What did you find with respect to the level of participation, please, sir?

A. The numbers were pretty significant. I mean pretty steady up until this past fall as it coincided with the new entrance requirements regarding courses. And with that group of new students coming in now who have had this core of courses that were required by the Board of Trustees beginning in the fall of 1986, our English—number of English students dropped by two-thirds, our math students dropped in half, and our reading students dropped, gosh, four-fifths.

Q. Do you consider this drop in level of participation to be significant?

A. Exceptionally significant.

Q. Could you explain why, please, sir.

A. What it says is that more students are now prepared in those areas. Even though the cut-off score of 12 is terribly low, it's saying—because our enrollment has been up now two years in a row, so we know it's not because fewer students are coming, but it's saying that the students who are coming to us now are prepared. They don't have to [3584] have remedial background in order to pursue a university level educatiom. That saves us dollars, it saves us a tremendous number of dollars that we now can redirect into other educational opportunities.

Q. Dr. Meredith, are you familiar with NCAA proposition forty-eight?

A. Yes, sir.

Q. What is that?

A. It's a policy passed by the membership of the NCAA which is, of course, the organization that governs athletics in colleges in this country. It was—and, of

course, the membership is made up of chief executive officers from across the country. Those are typically the voting members, either a chief executive officer or his designee. For the University of Mississippi, I vote, for example.

That said, beginning in August of 1986, that there would be a standard score required for student athletes in order to participate. And that standard score, which was not implemented the first year, was that all student athletes had to come in with 15 on the ACT and a two point oh grade point average if they were going to be allowed to receive a scholarship and play.

They had two incremental steps in putting that is. In 1986, I think you could go as low as a 13 with a two point four, I don't know that exactly, but there was some [3585] increment there.

This past year—I'm sorry. This coming year in August of 1987, you could get in with a 14 and still play and get a scholarship if you have at least a two point oh high school grade point average, or if you have less than a two point oh but you have a 16 on the ACT, you can get a scholarship and play.

But beginning in August of 1988, it's a straight 15 ACT, two point oh grade point average—both of them, not one or the other, but both of them—or you can't get a scholarship.

Q. Under the Board admission standards, Dr. Meredith, are students required to achieve a two point oh in high school?

A. They are not.

MR. STEPHENSON: Mr. Wadlington, would you pull Board Exhibit 201, please.

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Q. Dr. Meredith, are you familiar with a publication entitled, "The Nation at Risk—"

A. I am.

Q. "—an Imperative for Educational Reform?"

A. Yes, sir.

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[3586] A. This is the result of a National Commissions on Excellence in Education that was commissioned, I believe, by then Secretary of Education Terence Bell, and for the purpose of examining education to America: What was wrong, what needed to be done.

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[3590] One of the recommendations that came out of this was to raise admission standards.

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Q. Could you read specifically the recommendation that appears?

A. It's number two at the bottom of the page. (Reading): Four year colleges and universities should raise their admissions requirements and advise all potential applicants of the standards for admission in terms of specific courses required, performance in these areas and levels of achievement on standardized achievement tests in [3591] each of the five basics.

And it talks about the five basics earlier: English, math, science and so forth.

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Q. And I wanted you to review that recommendation, please, sir, and relate whether you saw any correlation there with respect to the State of Mississippi.

A. (Reading): We recommend that schools, colleges and universities adopt more rigorous and measurable standards and higher expectations for academic performance and student conduct and the four year colleges and universities raise their requirements for admission. This will help the students to do their best educationally with challenging materials in an environment that supports learning and authentic accomplishment.

And authentic accomplishment, of course, that refers to grade inflation.

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[3602] Q. Let's move now, Dr. Meredith, if we could, to another area, that of academic program review, please, sir. During your tenure with the Board, were procedures ever implemented for academic programs from all institutions?

A. Yes, sir, they were.

Q. Could you state approximately when these proceedings were implemented?

A. There are three of those: Two during my tenure and one after I left. One dealt with the review of all doctoral level, excluding engineering and nursing and a few other professional programs, pharmacy and so forth, but a review of those started with the Board initiation, calling for that in the summer of 1980, as I recall, and concluded that in April of 1984. There was some follow-up on that, but those are the primary...

And then the third one was a rereview of doctoral programs that occurred in the last couple of years.

Q. Would you explain, please, sir, the circumstances which led to the initiation of a program review?

A. I think it was stemming from all the same kinds of [3603] things we have been talking about with quality of

students, that with the great influx of students in the late sixties or mid to late sixties and early seventies, as institutions had grown so rapidly the concern over the quality of students coming out, the concern over the kinds of students that were in the institutions already coming from professors, all of those factors lumped together was causing the Board of Trustees to say in an August of 1980 meeting—I remember Mr. Charlie Jacobs making that motion, that he just felt that it was necessary for the Board of Trustees to stop and take a very critical look at all of our academic programs and to assess the quality and to see whether or not we were operating a quality operation, and he wanted that done as quickly as possible. And that initiated the process.

Q. What steps were taken, please, sir, to implement the review?

A. Well, the first thing that had to be developed—well, two or three things had to be developed, I guess, simultaneously. One was a comprehensive review of the literature. And I had in my office a file cabinet full of what every one everywhere had ever done about program review, and I had all their instruments. I knew exactly what they looked at. The whole works. And from that, we began to compile a document to review programs that would say, here are the kinds of things you ought to look at, and that began [3604] to be developed into a review document. And we would feed that to the institutions, all eight institutions, and say, okay, what's wrong with this, what's missing, what should be added, what's here that's really irrelevant that shouldn't be there? And that give and take went on for awhile until we started to level down to a document that every one could generally agree on.

Once we reached that, we decided and we already had in place a movement to run a pilot review program. This was going to be such an extensive project that we felt like we needed to run a pilot review on a few programs initially and determine if major changes or minor changes needed to be made before the big project took off.

And so with the pilot review on three particular areas, French, chemistry and English, ones so you could have a standard area that you're not going to get rid of like English, chemistry involved labs and so forth, and French was a small concentrated sort of discipline. That would give us a flavor for the breadth of an institution.

And we conducted the pilot review. We used outside consultants to evaluate the information and then made a recommendation to the Board of Trustees as a result of that. And that was the first phase of the entire program review process.

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[3608] Q. What were the results of the academic program review, Dr. Meredith?

A. Approximately one-third—now, let me clarify, too, counselor, so we don't get confusion rolling in here, that this document—these documents cover only the review of those programs below the doctoral level, and this occurred between 1980, if you will, and 1984, April. That's what that covers.

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But the results, overall, when you combine all this together is that approximately one-third of the degree programs available in the State of Mississippi at the eight public universities were eliminated.

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[3609] Q. Have you reviewed the numbers of programs eliminated?

A. Yes, sir. I have.

Q. How many total were eliminated, please, sir?

A. Four hundred and sixty-seven academic degree programs were finally eliminated through all the various processes and procedures.

Q. Do you have the break-out by institution?

A. I do.

Q. Could you state, please, sir, the number of programs eliminated by institutions?

A. Alcorn State, there were eight. Delta State, thirty-one. Jackson State, fourteen. Mississippi State, eighty-two, MUW, sixty-four. Mississippi Valley, twenty-nine. University of Mississippi, a hundred and fifty-one. And University of Southern Mississippi, eighty-eight.

Q. Have you made any calculations, please, sir, with respect to the percentage of total programs eliminated borne by each institution?

A. Yes, sir, I have.

Q. Would you relate those, please, sir?

A. Of the four hundred and sixty-seven programs [3610] eliminated, at Alcorn, the number there represented two percent. Two percent of the four hundred and sixty-seven programs were eliminated at Alcorn. Delta State was seven percent. Jackson State, three percent. Mississippi State, eighteen percent. MUW, fourteen percent. Mississippi Valley, six percent. University of Mississippi, thirty-two percent. University of Southern Mississippi, nineteen percent.

Q. How were the programs categorized during the review process?

A. There were four primary categorizations. One was commendation. That meant that the consultants found that this particular program was nationally competitive, it was that good. That was a rarity. There were only ten in the whole system found to be in that category.

Another category was approval. That simply meant that your enrollment is okay. You've got a good quality program in place. If you look at faculty, you look at library and all supporting materials, you have a good program in place. Approval. Nothing else for you to do, just keep on doing what you're doing.

Marginal was another category. Marginal said—I'm sorry. Well, let me go on. I can get out of line here. Marginal said, the quality in this program is poor. It may be faculty, it may be instructional materials, lack of lab, it may be a number of items, but the quality of this program [3611] is so poor that changes must be made. And they were given a timetable to accomplish those changes.

Another category was approval pending. Approval pending meant everything is in place, you've got the faculty, you've got the facilities, you've got the labs, all those things; but what's missing is an adequate number of students. Your enrollment is too small. Make a concerted effort to get your enrollment up in this particular program. Everything else is in place.

Then there were actually five categories, I meant. The last category was phase-out and that meant that all of this is so bad that you need to eliminate this program.

Q. Do you have any recollection, sir, concerning the manner in which the categorizations were grouped by institution?

A. I do.

Q. Can you just relate those briefly, please, sir?

A. Okay. In the approval category, fifty-two percent of the programs at Alcorn got an approval status. Let me see if I'm in the right direction here. I've scribbled on this page, and I need to get my lines straight. Four percent of all the approval programs were at Alcorn. Of all programs approved, four percent were at Alcorn. Ten percent of all approved programs were at Jackson State. Twenty-two percent at Mississippi State, and five percent at MUW.

Three percent [3612] at Mississippi Valley. Eighteen percent at Ole Miss and twenty-five percent at Southern.

And then the other major category was marginal. Everything mostly fell in approved or marginal, and I'll give you as much as you need here, but I don't know if I have it all calculated, but I do have the marginal calculated. Twenty-seven percent of all marginal programs, they were all programs found to be marginal were at Alcorn. Ten percent of all programs found to be marginal were at Delta State. Nineteen percent at Jackson State. Three percent at Mississippi State. Nine percent at MUW. Twenty-nine percent at the Valley. Three percent at Ole Miss, which represented two programs, and then none at Southern.

* * * * *

CROSS EXAMINATION

[3633] Q. Yesterday you gave us some numbers in terms of the amount of programs that were eliminated by the Board as a result of the academic program review, and also the number that received the marginal evaluation and the percentage of programs that were approved?

A. Yes.

Q. Now, directing your attention specifically to the numbers that you provided with respect to the marginal evaluations, it shows, does it not, that the three traditional black institutions had the greatest number of programs rated marginal?

A. Yes, ma'am.

Q. And as a result of that, that those programs were eliminated, is that correct?

A. No, ma'am

Q. Okay.

A. As I stated yesterday, "marginal" meant that your programs are sub-par quality, and the Board of Trustees then, as a result, set a path to improve the quality.

There were certain things you had to do. Maybe it was an accounting program, and you only had one doctorate teaching in your entire accounting program, and the Board of [3634] Trustees would say, you need to hire one or two by the year 1987 or 1986 or, you know, it was that kind of thing. There was a path set forward, but they did not get eliminated because you had a marginal status.

Q. What is—Once the program review had identified the deficiencies with respect to the programs that received a marginal evaluation at the three traditional black institutions, did the Board undertake any efforts to provide whatever resources were dictated to assist those institutions in strengthening those programs?

A. The Board did not provide resources for any institution, white or black.

* * * * *

[3638] MS. YOUNGER: Mr. Clerk, could you get for the witness, Board Exhibit 263.

A. I don't have that.

(Document passed.)

MS. YOUNGER:

Q. Now, Dr. Meredith, could you turn to Page 1 where there is Chart A of that document?

A. All right. Page 1.

Q. Yes, 1.

A. Okay.

Q. All right.

A. Chapter 1.

Q. Could you turn to Page 1 of Chart A.

A. All right.

Q. Chart A indicates the new programs and degrees from [3639] 1976 through 1986?

A. Right.

Q. That were implemented at the eight universities?

A. Yes.

Q. Could you review Chart A and tell me whether or not the three traditionally black institutions received fewer new programs than the TWI's during this ten year period?

A. Fewer than who?

Q. The traditionally black institutions, Alcorn State University and Mississippi Valley and Jackson State.

A. Fine. Jackson State and Delta State received the same number. The "W" received the same number. All received fifteen new programs.

Alcorn received two and Valley received six. Ole Miss received fourteen, Southern sixteen and Mississippi State had the most at twenty-two, so it looks like five out of the eight institutions had about the same number—Yes, and one—Mississippi State had more and, two, Alcorn and Valley had fewer.

Q. And Jackson State tied third with Delta State?

A. Delta State and the "W".

Q. Did the "W" have seventeen programs, is that not correct?

A. I may have misread.

Q. Two more programs than Delta State and Jackson State?

[3640] A. I am sorry. I had written that down differently. One more program than was gained by the University of Mississippi.

Q. All right. Okay.

A. Who had fourteen.

Q. Dr. Meredith, now we have just gone through the new programs that were approved for the various institutions.

Specifically, with respect to the traditional black institutions, how does this—Their programmatic expansion in the area of new programs comport with the objectives of the Plan of Compliance which states that the traditionally black institutions would have priority in receiving new degree programs?

A. I think to answer your question, you have to consider two things.

One, you need to know that institutions initiate all new program requests, so that these number that you see means that those institutions initiated those requests. The Board of Trustees did not go to Mississippi State on any of those twenty-two programs and ask them to come forward with those programs.

If Alcorn has two new programs that means that Alcorn only asked for two new programs in ten years.

Ole Miss got fourteen. That means that Ole Miss came forward with fourteen and asked for fourteen.

[3641] Jackson State got fifteen.

Right on down the line. That is how those are initiated. So, I think that is important to know.

I think that is the main point. I had a second point, but it has escaped me.

Q. Dr. Meredith, doesn't this exhibit show the number of programs that were approved. It does not indicate the number of programs requested by an institution, is that not correct?

A. This is true.

Q. So, from this document, we don't have any way of knowing how many programs Jackson State requested, and how many programs Alcorn requested, is that correct?

A. From this document?

Q. Yes or no.

A. From this document?

Q. Yes.

A. That's right.

Q. We only know how many programs were approved?

A. That's correct.

Q. Okay.

A. The other information is available.

Q. Upon the completion of the academic program review by the Board, did institutions remain in their – Remain in the relative positions that they were in prior to the program review?

[3641[A]] A. You need to define "positions".

Q. Okay. I will give you an example. If prior to the academic program review Mississippi Valley offered hypothetically thirty-five programs, and as a result of the review, Mississippi Valley offered seventeen programs, and you can use that same anaology for the other eight institutions, as a result of the program review, would institutions remain in the same relative position that they occupied prior to the review program?

A. Counselor, we did not enter program review – I don't know the answer to that, because that was not a purpose of the program review, was to jerrymander such that everybody's relative position stayed the same.

The purpose of program review was to assess every program, and from that determine the quality of that program, and then to make adjustments.

If changes needed to be made and improvements needed to be made, that would take place.

If programs needed to be eliminated because they were so poor, that would be done.

If they needed to be commended because they were so good, then that was done.

If they needed to be commended because they were so good, then that was done.

But there was no jerrymandering taking place to make sure that, well, let's take one away from them and give them one so that we can keep the positions the same.

[3642] I quite frankly cannot tell you in all honesty what that relative position comparison is. That was not an objective in this. The objective was academic, to find out where the quality was and to upgrade those that did not have the quality unless they were just so bad that you could not upgrade it or if there was such a degree of duplication in that area already that that institution should not expend the resources to upgrade, so I cannot answer that.

Q. So, it is your testimony that the Board did not undertake any special efforts to assist these institutions in upgrading their programs once they were viewed as being marginal or somehow deficient?

A. The Board of Trustees in my—

Q. Is that your answer?

A. In my remembrance, the Board of Trustees did not make any special allocation of funds to any of the eight universities to upgrade those programs that were judged marginal.

The institution was to shift resources inhouse to do that.

Q. Now, what was the highest rating that a program could receive during the review process?

A. Commendation.

Q. All right.

A. And that was recommended by the consultants.

[3643] Q. Did any of the programs at the traditionally black institutions receive a rating of commendation?

A. No, there were five institutions that did not receive any ratings of commendation, and of those five, the three historically black were among those five.

Q. Could you identify the other two white institutions?

A. M.U.W. and Delta State.

* * * * *

[3652] Q. Now, what factors did the Board utilize in determining how leadership roles would be assigned to its eight institutions?

A. Well, that is six years ago. Let me see if I can recall some of that.

* * * * *

[3653] Q. Do I need to repeat my question?

A. No. As I recall it – and I will leave out some things here because it has been some time ago – But we looked at the makeup of the institutions at that time in terms of enrollment and faculty and resources that they were putting into particular disciplines and areas. We looked at areas in which they had traditionally had strength. The research with which they were invovled.

[3654] That is just to give you an example, those kinds of things to determine mission.

Q. Did the mission statement preclude the enhancement of the traditional black institutions with respect to their level and scope of programs?

A. What was the word you used, "prohibited" or "promote" or what?

Q. Prohibit, preclude.

A. It put boundaries around all institutions.

Up until that time all institutions had been operated under the premise that they needed to do everything for everyone.

We were a State of two and a half million people and dwindling resources, and the Board of Trustees felt that it needed to give each institution a direction, and boundaries as well, and utilizing all of the elements that you see in the mission statements that the State would be covered.

All of those things would be addressed that this State needed to be about and needed to have, but, yes, institutions did have boundaries.

You need to concentrate your resources on certain things and quit trying to just keep on doing more. That was a problem.

Q. Isn't it true that the classification of Alcorn State University and Mississippi Valley as regional universities [3655] ensured that the level and scope of those programs be limited?

A. They would not go beyond the master's degree and that they would have a limited number of master's degrees available.

The same designation being given to M.U.W. and to Delta State.

Q. But, Dr. Meredith, at the time that the mission statement was implemented, isn't it true that Delta State, a regional university, already offered degrees at the specialist's and doctorate level?

A. Yes, sir.

Q. Isn't it also true, at the time that the mission statement was adopted that Mississippi University for Women also offered courses—strike that—offered programs beyond the master's level?

A. At the specialist's level. Delta State's program, doctorial program was to be re-reviewed in, I believe, 1984 or 1985 because it was outside of the norm of what they expected from regional universities.

If it survived that re-review, it could remain, but if it did not, it would go.

It was re-reviewed, as I understand, and that was after I left, and it did survive that re-review and was allowed to remain. It is constantly being monitored now by the Board staff, I understand.

[3656] Q. Well, isn't it true, that mission statements have the effect of maintaining the status quo toward institutions, such as Alcorn State University and Mississippi Valley and Jackson State with respect to their program offerings?

A. As it does for M.U.W. and Delta State.

* * * * *

[3662] **CROSS EXAMINATION**

MR. PRESSMAN:

Q. Dr. Meredith, you referred to pilot program reviews including the area of chemistry, is that right?

A. Yes.

Q. What elements of the chemistry program were investigated?

A. All elements. You know, I could pull a document and just start going through that, but just everything one would look at in terms of a review in an academic program area were reviewed.

Q. What ones can you remember?

A. Faculty, facilities, quality of the students in the [3663] program, the accreditation was a factor.

Q. Library?

A. Library was looked at.

Q. Equipment?

A. Yes.

Q. Okay.

A. Labs.

Q. Do you recall a summary being prepared of the consultants' findings?

A. I do.

Q. Could you tell me if what I read is from the summary?

"Although the consultant did not recommend the discontinuance of any of the four programs reviewed, the staff urges the Board to immediately suspend further enrollment into the degree program at Mississippi Valley State University. The number of participants has increased recently, but this activity does not warrant spending the resources necessary by Mississippi Valley State University to upgrade its program to an acceptable level. There are obvious immediate equipment and library needs. These two categories of need are readily apparent in many other areas at Mississippi Valley. Existing programs can easily handle the number involved at Mississippi Valley. There is an excellent program available at Delta State University, only forty miles away, and there are two other historically black [3664] institutions with much stronger programs."

A. That's correct.

Q. Did you write this?

A. I did. A master's program at Mississippi Valley – I mean at Delta State in chemistry was also eliminated.

I don't think you read quite that far, but it was also eliminated.

* * * * *

[3667] Q. What definition of "program" did you use?

A. I did not write that.

Q. Well, what definition of program did you use when you concluded that a hundred and fifty-one were elminated?

A. A program is a series of courses aligned to form a formal degree program that will lead to an academic degree. It is a recognized set of courses and it is approved by the Board of Trustees, and that is outlined in the academic programs inventory. I think it is part of the record.

I cannot explain to you what was used in 1974 or before I arrived.

Q. On the subject of programs, were there any instances of transferring programs from one campus to another campus in the period 1976 to 1986?

A. There was one transfer from one institution to another institution, but not from a campus, and that was the transfer of the baccaluareate nursing program that was run by the University of Southern Mississippi to the Alcorn State University in Natchez.

Q. Okay.

[3668] A. That occurred about 1977, 1976, somewhere right around in there. I don't recall any others.

Q. You testified about the overall results of the program review in terms of grading of the programs at each institution and with respect to your category of marginal at Alcorn State University about half of the programs were marginal, a little less than half?

A. That's correct.

Q. And at Valley somewhat over half were marginal.

A. That's correct.

Q. And the next highest was M.U.W. with sixteen percent marginal?

* * * * *

[3676] Q. Now, in terms of qualification for higher education, you spoke about low ACT scores of students who were in Mississippi universities in your testimony, is that right?

A. Yes.

Q. Would you agree that in the main, these low ACT scores reflected the kind of educational opportunities that those students had been provided by another branch of the State Government; namely, the system of elementary and secondary education?

A. I think it reflected more than that.

Q. What else?

A. I think it reflected some of that. I think it also reflected the lack of demand on students in the State of Mississippi.

Higher education certainly was not making any demands as far as entrance standards were concerned, so students did not have to produce more.

Our high school graduation requirements as they are now and are hopefully about to change, were so low that you could get out if you had any desire at all to get out of high school and graduate.

I think all of those things combined lead young people [3677] to do just what they had to do when the result was lower test acores.

Q. Well, were you aware at that time that the pattern of black test scores were lower than white test scores by a substantial degree?

A. Sure. As obvious from the surveys.

Q. Well, do you think that the demands were somehow lower on black students?

That the factor you mentioned would explain the difference in the scores?

A. I think there are two or three factors there.

One factor being that black students have the same problem today. By the way, I just came back from a conference in February, and I spoke at the conference and stayed over to hear a portion on retention of black students in universities, trying to get more black students to go to universities.

One of the major problems facing black students across the country is that they are not being counseled by black or white counselors to think in terms of college as a goal. They are being counseled as a goal to get out of high school, to try to make it to high school. No one is setting higher goals for them, and as a result, they are not taking the right courses to go on to college. It is not their goal for their life to go to a university. That is a major problem. [3678] Young people will do what they are asked to do. And the other fact of that is ACT data was clear from ACT, nationally as well as Mississippi, blacks do not score as well on the ACT standardized test as on the SAT or whatever.

So, we knew that that was a problem. That is why the scores were put as low as they were.

Q. Well, let me read to you from an ACT publication. This is Board 186, dated January of 1986, ACT. ACT Issuegram.

It says, "The lower average ACT assessment scores earned by minority students are indicators that on average the past educational opportunities and experiences of most minority students are inferior to those of majority students. This relationship between the quality of educational experience and achievement has been thoroughly documented for students across all racial and cultural backgrounds."

Do you agree with that statement?

A. Yes. I do not think believe that it conflicts at all with my first statement.

I think it directly coincides with that.

Q. Do you agree with this statement?

A. As it relates to my first statement, yes. I would agree with that.

Q. Well, let me put it in front of you.

A. It might be better.

[3679] (Document passed.)

THE WITNESS: What is the date of this?

Q. January of 1986. January.

A. Okay.

Q. Do you agree with that statement?

A. It depends on what ACT meant. I am not trying to split hairs with you, but it depends on whether ACT is talking about – when it is talking about past educational opportunities and experiences, if they are talking about by choice or whether it is available or not.

For example, my first statement that is why I am referring back to that, the opportunities are there for black young people across the country to take chemistry and physics. They are not being counseled to do so, because their goal is not to go to college where you are going to have to have those kinds of courses.

So, I would disagree with the opportunities section as stated in 1986. If this had been dated in the '60's, I probably would have agreed with that; but in 1986, I would disagree with the opportunities part, as far as we are concerned here.

I don't know about nationally. This is a national issuegram, I assume, but their experiences are less because they are being counseled to do less.

Q. You disagree with that as a statement in the 1970's, [3680] when the Board was acting on the admissions standards?

A. Early '70's, I would agree with it. And '60's, I would agree with it. From what I understand, because I was not here.

You know, I passed through here to get a doctorate for two years in the late '60's, and then gone, so I cannot answer that definitively.

Q. Students who were graduating in 1977 and 1978 in Mississippi would have experienced – black students would have experienced their first four or five years of education in segregated schools, wouldn't they?

A. In some instances, that is true. Not all of Mississippi was segregated prior to 1970.

Q. This question of counselors and counseling students in terms of courses, are you talking about counselors in Mississippi high schools?

A. Talking about nationally, and that would include Mississippi high schools, I assume.

Q. Okay.

A. I am talking about national information gathered from what is called the College Board. It does the SAT.

Q. Do you see this as including in Mississippi the counseling of black high school students by white counselors?

A. I think I said white and black.

Q. Okay.

[3681] A. There are a number of black counselors across the State, as I am sure you know.

Q. Okay.

A. And understand that that's not my data or information.

Q. But it is your opinion?

A. It is my opinion.

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[3695] **REDIRECT EXAMINATION**

MR. STEPHENSON:

Q. Dr. Meredith, on cross-examination I believe you [3696] mentioned five hundred thousand dollar appropriations to Alcorn State University and to Mississippi Valley State University.

Would you explain the circumstances which prompted these appropriations and the purposes for which these appropriations were made?

A. Well, as a result of the Compliance Plan, you know, there were a number of items listed in there, and those were refreshed earlier.

The efforts to be made by the Board of Trustees.

One, in securing Compliance Plan funds each year for the universities, so each institution would have a chance or have the opportunity to attract other race students and other race faculty members and all of that.

And the Board of Trustees did that and that money has been coming ever since. The Board of Trustees also, as indicated in that Plan, made a particular effort in the mid '70's—I don't remember the exact year, 1977—I don't know, whatever—To ask the legislature for specific dollars for Alcorn and for the Valley to give accreditation; that is, accreditation for the teacher education program, five hundred thousand dollars each. Alcorn.

Was successful first, as I recall, and then Valley obtained theirs a little later on, but that was a successful effort.

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[3698] **TESTIMONY OF JOSEPH S. ANZALONE**

THE WITNESS: My name is Joseph Samuel Anzalone.

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DIRECT EXAMINATION

MR. STEPHENSON:

* * * * *

A. My employer is the American College Testing Program.

Q. And what is your job title at that organization, please, sir?

A. I am the Assistant Vice President and the Regional Director for ACT's southeast region.

Q. And where are you headquartered? Professionally, where is your office, your ACT office?

A. The National ACT office is in Iowa City, Iowa.

Q. And your personal office?

A. The ACT Southeast Region Office is in Atlanta, Georgia.

[3699] Q. All right. Would you relate, please, sir, your formal education experiences since high school?

A. Since leaving high school, I enrolled first in the University of Southern Mississippi, was there from 1952 until 1956, earned a bachelor of science degree, went into the military for my obligation there for several years.

Later earned a master of science degree in college counseling from the University of Southern Mississippi, and eventually the doctor of philosophy degree in higher education administration from Florida State University.

Q. And would you provide the Court, sir, please, with a brief overview of your employment background following your securement of the bachelor's degree?

A. Well, as I indicated, I initially went into military and served my obligation there; left the service and went back to Southern Mississippi for the purpose of going to graduate school, but wound up being employed there as an admissions counselor.

From that position, eventually went to Tallahassee, Florida, where I served as a research assistant in the Office of Academic Affairs of the Board of Regents of the State University System of Florida.

I returned to Southern Mississippi from that position as Director of Admissions.

Q. All right.

[3700] A. In 1968, I left the University of Southern Mississippi and joined the staff of the Southern Regional

Education Board in Atlanta as a program associate in the Institute for Higher Educational Opportunity.

Q. Okay.

A. I later became Associate Director for Programs in that same institute at Southern Regional Educational Board.

Q. Okay.

A. Following service there of about five years, I joined The American College Testing Program as a Regional Director.

Q. And have you been with ACT ever since?

A. I have been with ACT since October of 1973.

Q. Dr. Anzalone, let's return, please, sir, to your four years at the University of Southern Mississippi, would you describe in a little more detail what you did in the area of college admissions?

A. In the period of 1960 to 19– through 1964, I was first an admissions counselor, and in that responsibility processed application forms, provided information to prospective students, talked with high school counselors, worked with other college admissions staff in the State in the– In the broad area of student–Student enrollment.

I later assumed responsibilities there as Acting Director of Admissions and eventually as Director of Admissions. At which time, I was responsible for the general [3701] operations of the undergraduate and graduate admissions office.

Q. You indicated also, I believe, Dr. Anzalone, that you worked for the Board of Regents University System of Florida?

A. That's correct.

Q. Did your–Did you have any duties and responsibilities with that entity in the area of college admissions?

A. Yes. I was in Tallahassee for the particular purpose of pursuing graduate study and was offered an opportunity to join the staff of the Board of Regents because they did not have anyone on staff at that time who came out of a college admissions background.

They were very concerned about some of the admissions issues in the State at that time, so I had the opportunity to work with them in some research projects.

Q. Could you relate briefly representative examples of the research projects on which you worked while you were with the Board of Regents?

A. Yes, I can. There was considerable concern about the very, very, very rapidly increasing enrollment in the State University System of Florida at that time. That was not peculiar to Florida in the 1960's.

And there was considerable opinion that students were filing applications for admission to more than one college or university. So one of my research projects involved

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[3702] Q. And I believe you indicated that you returned to the Unviersity of Southern Mississippi as Director of Admissions.

What were your duties at that time?

A. I actually returned at the end of 1966 as Director of Admissions and as Assistant Professor of Education.

In addition to my administrative reponsibilities in managing the admissions office, I also organized and taught [3703] two advanced graduate level courses.

One in the history and development of American higher education, and the other was in administration in higher education.

* * * * *

Q. And what were your basic duties with SREB?

A. I joined the Southern Region Education Board and its Institute for Higher Educational Opportunity primarily to work in the area of expanding opportunities for black students, in both historically black and in predominantly white institutions in the SREB states.

* * * * *

[3704] Q. Could you relate, please, sir, the states in which you have consulted for or made presentations with respect to the ACT assessment during your tenure as Regional Director?

A. I originally had responsibility for working in West Virginia and in Washington D.C. and in the State of Virginia for ACT. I did that for about a year. The majority of my work was in West Virginia.

During that time, I met with admissions officers, I met with staff of the governing board for the public higher education in the state, met with other association individuals to, in essence, describe and report on ACT assessment and other data available on West Virginia students.

Pursued similar kinds of activities advertise in Virginia.

Most of my work in Washington D.C. at that time was with two or three colleges that were using ACT's financial aid services as a way of gathering data to award financial aid dollars to their students.

[3705] I moved from that geographic assignment to the states of Florida and South Carolina and Virginia, still, I believe. Again, the duties were quite similar, to work with educators, to work with schools, with institutions, with governing boards and state agencies and associations, to make them aware of ACT programs and servies and how indeed they might be useful to them.

Q. All right. Have you consulted in any additional states beyond those that you just mentioned?

For example, Mississippi or Tennessee or others?

A. Yes, yes, sir. Those are obvious examples. As I continued to function as a Regional Director in the southeast, I eventually moved into the states of Mississippi and Tennessee, continued to do some work in Virginia.

Mississippi and Tennessee are two of the states in the southeast that for a good many years have been involved in the ACT Assessment Program and ACT's financial aid services and other services which we offer.

* * * * *

[3706] Q. By way of example, Dr. Anzalone, would you please identify several examples of consultation with state university systems concerning utilization of the ACT assessment in admissions standards and placement procedures.

Now, in which you have participated fairly recently?

* * * * *

A. All right. I have been meeting within the last two years at their invitation with the Committee on Guidance, Admissions, Placement and Performance of the Kentucky Council on Higher Education. This is an advisory committee to the [3707] Council which is made up of college admissions officers, high school representatives, State Department of Education representatives in Kentucky, designed to monitor the implementation of the new precollegiate curriculum requirements in Kentucky.

* * * * *

[3708] I have had opportunity more recently to work with staff of the University System of Georgia in two capacities. Since February of 1984, we have been engaged in dialogue regarding the possible use of the ACT Assessment Program for those thirty-four institutions, in addi-

tion to or as an option for students so that they would not have to take the scholastic aptitude test, so that was one area.

That relationship resulted in a decision by the Board of Regents in September to adopt the ACT Assessment Program for such use.

Q. Now, Dr. Anzalone, have you lectured at professional meetings or conducted workshops and seminars over the years concerning utilization of the ACT assessment?

A. Yes, I have.

Q. How many?

A. I would estimate that there have been several hundred occasions over the last twelve, thirteen years, where I have [3710] some, of course, that have been more recent than that period.

MR. STEPHENSON: Your Honor, we tender Dr. Anzalone as an expert in the area of college admissions with emphasis upon utilization of the ACT assessment.

THE COURT: Does the Government wish to voir dire on this area?

MRS. JOHNSON-BETTS: No, Your Honor.

THE COURT: The Private Plaintiff?

MR. PRESSMAN: No.

THE COURT: Very well. The witness will be accepted as qualified to give opinions in that area.

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Q. Dr. Anzalone, we have mentioned several times this morning the term ACT assessment. What is the ACT assessment?

A. Essentially, the ACT assessment is a rather comprehensive system for collecting and analyzing and reporting data helpful to students as they plan for post secondary education.

* * * * *

[3711] A. There are several major components of the ACT Assessment Program. Probably the best known are the battery of tests typically referred to as the ACT test, English, mathematics, social studies and natural sciences.

* * * * *

Q. What are the ACT tests designed to measure?

A. The ACT tests are designed to measure developed academic abilities that are deemed important for success in college.

* * * * *

[3712] Q. How many states are utilizing the test today?

A. To some extent every state in the nation has at least an institution that is making some use of the data in some way. The typical way probably, though, of indicating that is to – Is to make a reference to Department of Education – U.S. Department of Education information, which revealed last year, I believe, that the ACT was the predominant admissions test in twenty-eight of the fifty states.

In addition, in several other states, there is very high [3713] ACT test volume. For example, in Texas and Florida.

Q. For example, how many students were tested the past year?

A. Somewhere over a million.

Q. We mentioned earlier, Dr. Anzalone, the sub-test. Could you explain to the Court what the composite score is on the ACT assessment?

A. Well, there are four tests in the ACT assessment battery. The composite score is the average of the score of – Scores of those four tests.

Q. And would you describe briefly, please, sir, the procedure followed in the construction of test items?

A. Gee. The construction of the ACT Assessment Program is a very, very detailed process. It typically takes place over a two to three year period.

It begins with the development of technical specifications for test items. Those specifications are written. Item writers are invited to submit items that meet those test specifications under some carefully controlled instructions from ACT.

Those items are submitted. They are possibly refined, eventually tried out, eventually gone into a pool of items. They are reviewed for cultural or ethnic bias, reviewed for sexual bias and eventually they are drawn from that pool to create new forms of the ACT test.

[3714] Along that way, the ACT organization, through its test development division, monitors secondary school curriculum, monitors in particular freshman year curricular offerings and that is done both through the development of the Test Development Committees, made up of knowledgeable experts in those curricular areas, and by the selection of knowledgeable individuals who are indeed the item writers.

* * * * *

[3715] Q. Dr. Anzalone, do you have an opinion as to the educational reasonableness of the Board's admissions standards, including specifically the utilization of the ACT assessment?

A. I do.

Q. And what is that opinion, please, sir?

A. My general opinion is that taken in their totality, the Board's admissions standards, including the use of the ACT Assessment Program results appear to be reasonable.

* * * * *

[3716] Q. Dr. Anzalone, excuse me. When I interrupted, you were about to relate the bases for your opinion, and I believe you were referring to Board Exhibit 183, the Admissions Standards, February of 1986?

[3717] A. Yes.

Q. Would you state the bases for your opinion, please, sir.

A. Well, I reviewed the document. Particularly, I think beginning on Page 4 under the Admissions Standards section. I noted the initiation of admissions standards related to high school units required as an indication of preparation for university admission in Mississippi.

As I turn the page, I particularly noted that the units are broken down into English, mathematics, science, social sciences. Those particular curriculum breakdowns, of course, are the very areas that are sampled by the ACT Assessment Program approach.

The English usage testimony, the mathematics test, the natural sciences test and the social studies test. Indications again, of course, that it is very reasonable that the Board prescribes a precollege curriculum that would be appropriate for students in high school to complete, if indeed, they are planning to enter university studies.

Q. All right.

A. As I continued that review, there are indications that the Board allows, in implementing that previous requirement, allows for deferrals as they move on through this academic year.

I believe that they would cover essentially the mathematics and the sciences areas and perhaps one other. [3718] I think – My own margin notes indicate to me that the Board's decision to move in this direction with a specific pre-college curriculum is beginning to have a positive impact on students' readiness for the studies. There is some data, for example, that indicates Mississippi students and national students who are completing such

core requirements are performing somewhat higher on the ACT Assessment Program than students who do not complete core preparation.

Q. You have mentioned, I believe, data.

* * * * *

Q. I show you Board Exhibit 170. Dr. Anzalone, I ask you, sir, if you have seen that document before?

A. I have.

Q. Does that document bear any relationship to the opinion of reasonableness which you have just related?

A. It is an indication that students who complete such core requirements tend to perform at higher average levels on the ACT assessment than students who did not.

Q. As—Could you highlight, for example, please, sir, what is reflected by that document that leads to your conclusion, as it relates to the scores?

[3719] A. I think it is particularly important to note that this indeed is data on Mississippi students. We are talking about the very recent graduating class of just last year, and on the front page of the document, the data are displayed irrespective of core or noncore and so what you get are ethnic or other break-outs on mean scores.

When you go into the middle section of the page, you can then begin to make some comparisons between black students, white students, others, who indicated that they had completed the core and that, of course, was a part of the assessment program data collection.

Finally, at the bottom of the page under the same auspices, those students who had not completed core, so we have the total group and we have two sub-groups, those completing core and those who did not. It is obvious that those students who completed core had higher mean scores on ACT assessment than those who did not.

Q. Would you contrast based on Board Exhibit 170,

please, sir, the ACT scores as between students who completed the core and those who did not?

A. For example, if we use – If we use the totals, black students who took the ACT and indicated that they had completed the core had a composite score of fourteen point three. Those who had not completed the core had an ACT composite score of only ten point eight.

[3720] For white students, those completing the core, nineteen point nine; those who indicated they had not, fifteen point two.

Q. Those numbers appear, Dr. Anzalone, under a column headed Mean.

What is the mean? What does that term mean?

A. The mean is the average of the scores in the English natural sciences, math, social studies tests.

Q. Has your own organization done any study or analysis of the significance of utilizing pre-college curriculum as a measure of academic achievement?

A. We have been – We have been tracking for a number of years some course pattern. For example, during – and I guess extending on into the 1980's, we provided a question in the ACT Assessment Program student profile section for the student to identify what kind of high school course pattern he or she either completed or was in the process of completing, and we have noted for many years that those students who have indicated that they were completing a pre-college curriculum or college preparatory curriculum had, as one might expect, higher mean scores on the ACT test, and certainly on the composite.

As we entered the '80's and began to investigate the issue of preparedness for college and, obviously, we were not alone in that, there were a number of national reports [3721] that were addressing the issue of student performance or of quality in education, we made – We paid par-

ticular attention to the kind of high school experience that the student had by way of course pattern.

We, because of our interest in that, we began to develop an expanded course grade reporting procedure for the ACT assessment. There are now – There is now a way for the individual student to report up to thirty course grade experiences as a part of the ACT Assessment Program. That pattern is very comprehensive.

For example, in the English area, it allows for the student to record the ninth, tenth, eleventh, twelfth grade English grades and a fifth grade, which could include speech or dramatics. I think it is speech and debate actually.

In the math area, it starts with algebra I, algebra II, geometry, trigonometry, calculus and computer science and so forth. I think there are seven math grades. The whole point of that – The same thing would be true in social studies and in the natural sciences area.

What we are getting at there is the ability to identify the extent to which students course pattern might indeed have some impact on achievement.

Q. My question specifically also, Dr. Anzalone, relates to whether you were aware of any written research publications prepared by your organization addressing high [3722] school course curriculum as a measure of academic achievement?

A. There is – I think in addition to some unpublished documents which I have seen, there is indeed a paper that has been prepared by Jim Maxey and other authors at ACT, comparing measures of high school performance with the ACT Assessment Program specifically.

* * * * *

Q. We were discussing a research publication by your organization addressing high school course curriculum as

a [3723] measurement of achievement. And I ask you if you can identify the document marked Board Exhibit 167.

A. Yes, I can.

Q. And is that the publication to which you referred?

A. Yes, it is.

Q. Thank you. We were also discussing, Dr. Anzalone, the bases for your opinion concerning the reasonableness of the admissions standards. Would you continue, please, sir, with those bases?

A. We had, I believe, just concluded some comments regarding the exhibit that you just introduced. When I continued to review the admissions standards and began to look at some of the exceptions, one of the first exceptions I examined has to do with the admissions standards for older students and I read here where students who are twenty-one years of age or older are exempt from the admissions standards.

Again, it is not unusual in American higher education for institutions to have somewhat different standards for the returning or adult students.

Two, the requirements related to out of state students typical for public colleges and universities. The alternate presentation of SAT results, again, is not uncommon in a state where the ACT may be the dominant or required test to permit some alternative for students coming from other states where that may not be the case and the reverse of that is [3724] typically true.

Continuing on to review the requirements for transfer students –

Q. Dr. Anzalone, could you identify for the record, please, sir, the page of Board Exhibit 183 to which you are referring?

A. I just left page seven when I mentioned comparative SAT and ACT scores and turned the page to the re-

quirements related to transfer students.

Q. And did you reach any conclusions, sir, with respect to the transfer requirement?

A. I think, again, the transfer requirements are fairly liberal, a procedure which allows students to initially enroll elsewhere to transfer into the public university system after completing only twenty-four hours of credit, essentially a year at another institution. And even there, the institution, the public university has—May exercise an exception to allow a limited number of high risk students in with as few as twelve credit hours.

I think to some extent in my judgment and my experience in the State, this is one indication of the value of Mississippi's public junior college system, which is readily available as local institutions. The public universities down through the years have had a considerable tradition of working closely with public junior colleges, in particular in the transfer situation of individual students, and I see that [3725] is a very positive aspect of the Board's admission requirements.

As we begin to look at page nine, the requirements for Delta State University, for Mississippi State, for Mississippi University for Women, for the University of Mississippi and for the University of Southern Mississippi, we begin to see the specification of admission standards for those institutions. It specifies a minimum of 15 composite score on the ACT. That 15 is slightly below the average for college-bound students in Mississippi.

It's—When we look at—Immediately then following that, the standards permit a considerable exception to that so that institutions can admit high risk students or students who have been identified as being particularly talented in some area who may have an ACT composite score as low as nine.

When that occurs, it's my understanding the institution can utilize other factors as a part of that screening process for high risk students. They might indeed look at class rank, they might look at writing samples for the students, they might look at out-of-class accomplishments of such students. There could be other factors, I understand at the discretion of the institution, that would be appropriate for the admission of high risk students.

* * * * *

[3729] I think as we look at those requirements, particularly in the broader context of American higher education, the minimum score levels required by the Board are characteristic of institutions that range all the way from an open door admissions policy through liberal to fairly traditional requirements. And I think that's quite a contrast from those institutions characterized as having selective or highly selective policies.

* * * * *

[3730] Q. Have you examined, Dr. Anzalone, these test score requirements in the context of the Mississippi population taking the test as to how the students perform?

A. Yes, I have. I used, in particular, the Mississippi high school profile report which is generated each year for Mississippi students and is provided to the Board and is provided to the State Department of Education. And when we look at the test score requirements in the context of all eight of the universities, the floor, so to speak, or the minimum eligible requirement really will encompass about ninety percent of ACT tested students in Mississippi.

Q. What test score is that?

A. That's a composite score of nine. In other words, what I'm trying to say is that the exemption procedures that are in place in the system will allow an institution to [3731] consider a student who has performed at a level of

academic—Or has a level of academic performance that would be reflected by a composite score of nine.

Q. Have you also looked at the 13?

A. I did and, in essence, that puts about seven out of every ten students into the pool.

Q. Approximately what percentage of the black students taking the test, Dr. Anzalone, score nine or above?

A. As I recall, about eighty percent of the black students score nine or above.

* * * * *

[3732] Q. Have you examined or do you have any judgment, sir, with respect to what is reflected by an ACT score of nine as it may relate to the relative reading level of a student?

* * * * *

[3733] A. There are conversion tables in the report. For example, if we're taking a nine in English and a nine in social studies and then looking that up—I'm sorry, counsel, I'm trying to do this too quickly. That would be about the ninth grade reading level.

* * * * *

[3735] Q. Dr. Anzalone, I'm showing you what has been introduced into evidence as Board 163 and ask you if you can identify for the record, please, sir, that document?

A. This is an ACT document entitled Statement of Policy on the Use of ACT Data.

* * * * *

Q. And would you read into the record, please, sir, —item B(1)(C) as it appears on page five.

A. Item B(1)(C) indicates that (reading): "ACT test score data should not be used as the sole criterion for ad-

mission selection decisions. ACT encourages colleges to consider other measures of academic ability, for example, high school grades, rank in class, as well as various non-cognitive factors, interests, special skills, experiences in the admission selection decision."

Q. Now, Dr. Anzalone, have you examined the Board's standards in light of this statement?

A. I have.

[3736] Q. Have you reached any conclusion?

A. I have.

Q. What is it, please, sir?

A. In my opinion, taken in its entirety, the ACT Board standards would meet that particular requirement or that particular recommendation.

* * * * *

CROSS EXAMINATION

[3741] Q. So your understanding, Dr. Anzalone, is that those students with a particular ACT score—And what is the ACT score?

A. Nine, I think, is in the second category.

Q. A nine and a particular high school GPA?

A. At least a three point oh.

Q. Those students could be admitted to the institution and not included in the five percent exception?

A. That would be my understanding, yes.

Q. Okay. I'm going to let you keep that, Dr. Anzalone.

A. Okay.

Q. Dr. Anzalone, I'm going to show you a series of exhibits, Board 163, which you just read from during direct examination, Board Exhibit 186 and U.S. Exhibit 875. Looking now to Board Exhibit 163, which is the statement of policies of the American College Testing program. Turning now to page five of that document, Dr. Anzalone.

A. (witness complying.)

Q. What is the information, how is the information titled on page four of Board Exhibit 163?

[3742] A. There's a section beginning, Responsibilities of ACT and Guidelines for Institutions on the Use of Data Collected Through ACT Programs.

Q. And what is the purpose of the statement of policies provided by ACT, Dr. Anzalone?

A. The statement is to provide guidelines for users of the data so that they will understand the use for which the data are intended.

Q. Is—

A. The—

Q. I'm sorry. Sir, did you have something else to say?

A. No, go right ahead.

Q. Is Board 163 a statement of the policies of the American Collee Testing program regarding among other things its belief about, on page five—

A. Uh-huh.

Q. —The manner in which ACT—The manner in which the ACT assessment should be used in admission selections decisions?

A. Yes, there are—It's divided into responsibilities of ACT, which means our recommendations or decisions and guidelines for institutions.

Q. Is Board 163 or was Board 163 in effect in 1981, Dr. Anzalone?

A. Yes, the publication date of the document is June 1979.

[3743] Q. And did you review this exhibit during your deposition in November of 1981, Dr. Anzalone?

A. Yes, I did.

Q. Given the admission requirements that you jsut read for 1981-82 for the Board of Trustees, didn't the Board of Trustees admissions requirements condition ad-

mission upon performance on the ACT assessment?

A. Yes.

Q. Didn't they condition admission on performance on the ACT assessment without regard to any other measure of past academic achievement?

A. I would say yes.

Q. Looking now at page five, (b)(1)(c)—

A. Uh-huh.

Q. —Dr. Anzalone, did you read (b)(1)(c) on direct examination?

A. I believe so.

Q. (B)(1)(c) indicates that test score data should not be used as the sole criterion for admission selection decisions.

Is it your testimony today that the Board of Trustees' policy, in terms of the 1981 document that you just read, that the policy is consistent with the statement included in (b)(1)(c) on page five of the Statement of Policy?

A. The standards that we were examining in 1981 and 1982 [3744] indeed identify the ACT composite as a sole criterion for admission.

Q. Would that, Dr. Anzalone, be consistent with (b)(1)(c) in Board Exhibit 163 on page five?

A. It would be inconsistent.

Q. I show you, Dr. Anzalone, what has been marked as Board Exhibit 186. Let me close that for you, sir.

A. (Witness examining document.)

Q. Are you familiar, Dr. Anzalone, with Board Exhibit 186?

A. Yes, I am.

Q. And what is Board Exhibit 186?

A. It is an ACT issuegram addressing admissions testing and minorities, selected issues as related to the ACT assessment program.

Q. What is the date on Board Exhibit 186?

A. January, 1986.

Q. Directing your attention, Dr. Anzalone, to page six of this document which pertains to interpretation and use. Would you read the first paragraph, Dr. Anzalone?

A. (Reading): "Because many factors, for example, socio-economic status, differences in educational opportunities, culture, et cetera, can potentially affect the test performance of many students who are members of minority groups, ACT believes that assessment for the purpose of college admissions should reflect as complete a picture as [3745] possible of students and should include other information in addition to test scores. The following is a brief summary . . ." et cetera.

Q. Okay. Dr. Anzalone, is the statement contained on page sic of Board Exhibit 186 consistent with the policy statement articulated in Board Exhibit 163 or page five from which you jsut read, the (b)(1)(c)? I'm sorry, I closed your exhibit and you need it.

A. The sole criterion issue, again, counselor?

Q. Yes, Dr. Anzalone.

A. I believe that it is – That it's consistent with that, yes.

Q. Okay. Were the Board of Trustees' admissions policies from which you read in 1981 –

A. Uh-huh.

Q. – Were those admissions policies at the five institutions, Delta State University, Mississippi State University, the University of Mississippi, Mississippi University for Women – I think I've gotten all five.

A. Uh-huh.

Q. But I'm referring to that portion of the admissions standards.

A. Uh-huh.

Q. Is that consistent with what you just read from Board Exhibit 186?

[3746] A. The standards in effect in 1981-82 would not be consistent with this 1986 statement.

Q. Dr. Anzalone, you mentioned on direct testimony that part of the ACT assessment includes a student profile and I believe an ACT interest inventory?

A. Uh-huh.

Q. In the student profile information is additional information collected about a student that might enable an institution to consider factors other than test scores in the admissions selection decision-making process?

A. Yes, there are.

Q. What other kind of information is included in the student profile section of the ACT assessment?

A. Well, I think the one that's most obviously related to this would be the indication fo the extent to which the student has completed certain courses in high school in preparation for college.

Q. Would information also be included concerning the student's performance in four particular high school courses?

A. Yes, the students are asked to provide that information.

Q. Does the student also provide information in terms of their high school GPA?

A. Yes.

* * * * *

[3748] Q. Are the predictive research services of the American College Testing Program made available to all the institutions participating in the ACT assessment program?

A. The service is available.

Q. Is there an additional cost required to participate in the predictive research service?

A. There is no charge by ACT.

* * * * *

[3749] Q. Referring now to U.S. Exhibit 875, Dr. Anzalone, page four—And you have that before you—That's using the ACT on campus?

A. Yes.

Q. On page four at the bottom of the page, the first column on page four, the very last paragraph (reading): "For its part, ACT believes that all students who can succeed in college should have a fair chance of selection; therefore, ACT recommends that all students be selected with appropriate attention given to qualifications in addition to test scores."

Do you agree with that statement, included in U.S. Exhibit 875?

A. I agree with ACT's recommendation, yes.

Q. Were the admissions requirements referred to in the 1981-82 admissions policies by the Board of Trustees for the five historically white institutions consistent with that recommendation?

A. (No verbal response.)

Q. To be very direct, Dr. Anzalone, did they include references to other measures of achievement other than test scores?

A. I don't beleive so, but without checking the exhibit I don't recall what the exception policy was.

Q. The exhibit is U.S. Exhibit 744-B. You have it right there in front of you.

[3750] A. Somewhere.

Q. Take your time.

A. My resopnse is no.

Q. Dr. Anzalone, we've reviewed the availability of information other than ACT test scores—

A. Right.

Q. —In terms of the collee student report?

* * * * *

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Q. The exhibit is U.S. Exhibit 744-B. You have it right there in front of you.

[3750] A. Somewhere.

Q. Take your time.

A. My response is no.

Q. Dr. Anzalone, we've reviewed the availability of information other than ACT test scores—

A. Right.

Q. —In terms of the college student report?

A. Right.

Q. Would you recommend that an institution with information such as that included on the college student report ignore those other sources of information and rely on test scores alone in the admissions selection decision-making process? Would that be your recommendation?

A. No, my recommendation would be that other factors be included in the totality of the admissions standards.

Q. What other factors do you refer to, Dr. Anzalone?

A. Well, I think there are at least three that are obvious in the student profile report. You have mentioned the four self-reported high school grades. I had identified earlier—You had also identified, I believe, the self—The students self-report rank in class, and I had identifieed the expanded course grade reporting section of the student profile.

Q. Dr. Anzalone, has the American College Testing Program undertaken any effort to study the accuracy of self-reported [3751] high school grades?

A. Yes, we have.

Q. And what were the results of the American College Testing Program's study regarding the accuracy of self-reported high school grades?

A. As I recall, there have been two research paths, one a bit older than the other. The incorporation of high—self-reported high school grades in the ACT process goes back a number of years and, indeed, there are ACT research documents which indicate that our studies reveal that students report those grades—I think it's about eighty or eighty-five percent of the students report them within at least one grade level. So that's been one theme of research.

In general, ACT believes that self-reported grades are useful in that process.

A more recent research approach has related to the students' self-reporting of the expanded course experience section. And in that particular research, which I believe was done in – with Illinois and Kentucky students, the accuracy of the reporting of those course grades and whether the student actually had taken those courses was even higher.

* * * * *

[3753] Research Service?

A. Counsel, I can't recall whether each was in standard or whether one or may may hbe been basic instead of standard.

Q. Did you review reports for each of the institutions?

A. I reviewed those I think that were the most recent reports.

Q. And was there a report for each of the eight institutions?

A. I believe that one was missing, but I can't cite to you which one.

Q. Dr. Anzalone, for the eight public institutions in the State of Mississippi, isn't there a strong positive correlation between self-reported high school grades and first year college grades?

A. Do you mean – You mean in general?

Q. In general.

A. There typically is a relationship. I wouldn't designate them as strong positive relationships in every case.

MS. JOHNSON-BETTS: May I approach the witness, Your Honor?

THE COURT: Yes, you may.

(Document passed.)

MS. JOHNSON-BETTS:

Q. Dr. Anzalone, I show you what has been marked U.S. Exhibit 903. U.S. Exhibit 903, Dr. Anzalone, in-

cludes [3754] Standard Research Service reports for the University of Mississippi, University of Southern Mississippi, Mississippi State University, Jackson State University and Mississippi Valley State University for the 1985-86 freshman class.

A. Did you mention six institutions, counselor?

Q. Yes, Dr. Anzalone. We only have reports for six institutions.

A. There are six here.

Q. Is there information provided in the standard research report regarding the correlation between high school grades and first year college grades, the correlation between the four subtest scores and first year college grades and the correlation between a combined formula of test scores and high school grades and first year college grades?

A. Counselor, do you have reference to some particular section of the report?

A. I am examining now, Dr. Anzalone, I'm looking at the report for the University of Mississippi and I'm on page one zero. It's right after the index.

A. Okay. Thank you.

Q. Table H-1.

A. Thank you.

Q. Relative efficiency of indices in predicting college grades.

A. Yes, thank you.

[3755] Q. There is a reference to each of the subject areas identified for the University of Mississippi, English, mathematics, history and science, and then an overall category.

A. Right.

Q. With regard to the—We'll go straight across the column.

A. Okay.

Q. With regard to – or the row, I should say – the correlation between the four subtest scores and college, first year college grades –

A. Uh-huh.

Q. – Is there a correlation between those two indices?

A. The correlation is point four five.

Q. Is that a significant correlation?

A. I would identify it as a useable correlation. It can be used effectively in college placement decisions, for example. It should be useful to the institution, yes.

Q. Directing your attention now, Dr. Anzalone, to the next column, the H Index –

A. Uh-huh.

Q. – for high school grades. Is there a correlation there expressed for – I should say between high school grades, the four self-reported high school grades and first year college GPA?

A. Yes, there is.

[3756] Q. And what is that correlation?

A. It's point five two.

Q. Is that correlation higher than the correlation that you mentioned for test scores?

A. Yes, it's higher.

Q. And in the correlation expressed in the third category which is a combination of test scores, four subtest scores, and four high school reported grades –

A. Uh-huh.

Q. – Is that correlation stronger than either of those alone?

A. It's higher, it's point five six.

Q. Are the findings that we've reviewed in general consistent with the findings of the American College Testing Program regarding the strength of the prediction in using

ACT subtest scores and high school grades in combination versus either high school grades or test scores alone?

A. Uh-huh. Obviously, there is a variation between institutions. What you have in the lower half of that page, for example—

* * * * *

Q. —Isn't what we have observed regarding the correlation between the four self-reported high school grades—

[3757] A. All right.

Q. —and the four subtest scores—

A. Right.

Q. —and the strength of those eight factors—

A. Right.

Q. —in predicting first year college success, isn't that observation the same observartions that the American Testing Program has made, that subtest scores and high school grades together are a better predictor of first year college success than either test scores or high school grades alone?

A. Yes.

Q. Thank you. Directing your attention now, Dr. Anzalone, to another table, in U.S. 903, Table L12.5. I believe, Dr. Anzalone, that's page 409.

A. L12.5.

Q. Four point oh nine, I should say.

A. Okay.

Q. Is Table L12.5 the table that the institution could use in computing the prediction of first year college grades from the four subtest scores and the four self-reported high school grades?

A. Yes. An institution—an individual typically would use this chart for that purpose.

Q. An individual, Dr. Anzalone?

A. Right.

[3758] Q. I don't understand.

A. That's why the chart is provided, so that an individual can go through the steps identified. For example, in talking with a prospective student, let's say, they can go through the steps and, say, based upon your test scores and your high school grades, this would be your prediction.

Q. Dr. Anzalone, referring to figure one—

A. Uh-huh.

Q. —Figure one includes information that would be used in predicting or in completing that part of the formula that involves the four subtest scores on the ACT; isn't that correct?

A. That's correct.

Q. And figure two includes the information—same page, figure two.

A. Uh-huh.

Q. —includes the information that would be used in completing the formula using the four self-reported high school grades; isn't that correct?

A. That's correct.

Q. And the third step in this process would involve a combination of the results obtained in step one, using the four subtest scores, and the results obtained in step two, using the high school, four self-reported high school grades and averaging the results of both of those?

[3759] A. That's correct.

Q. For example, Dr. Anzalone, could we look at and—And we are referring to the University of Mississippi.

A. Uh-huh.

Q. Could we look at an ACT score of 12 in each of the subtest areas under figure number one and complete the appropriate statistical calculations included in step one?

And if you would like a piece of paper or something to take notes on. . . Do you have some? Do you need a pen or pencil?

A. I can use it right here.

A. Okay.

A. Okay. You would like me to move through the steps?

Q. Just working through step one now.

A. Okay.

Q. Using an ACT of 12 in each of the four subtest areas. We're using a hypothetical –

A. All right. We would then use the column on the left of figure one at twelve, we would move to the right and we would write down the figure nine. We would move to the right and write down the figure three. We would move to the right and write down the figure minus one. We would add those together and that would be an eleven, I believe. We would then add the ACT constant of seven to that, I believe, and that would be eighteen. We would then mark off one decimal position.

[3760] Q. Thank you, Dr. Anzalone. So at the end of step one we have a one point eight.

A. Correct.

Q. Correct. Now, referring to figure number two, step two in this process. We look at high school grades. Looking at a B average, a B in each of the four subtest areas –

A. Uh-huh.

Q. – What would the GPA predicted under step two be?

A. Under step two we would write down a four, a seven, a five and a five and that would give us twenty-one, and we would add the constant of four to that, which would be twenty-five. You would mark off one place, and that would give us two point five.

Q. What does step three require us to do now, Dr. Anzalone?

A. Step three requires us to average the two predictions so we would add two point five to the previous one point eight, and in doing so, we would get four point three. We would then average those two predications by dividing by two and, in essence, we would get a two point one.

Q. That's two point one college GPA for the first year?

A. (Witness nods head up and down.)

Q. Dr. Anzalone, could we just take one other step using the same document and we'll use our same information from step two and modify step one to look at an ACT of eleven in each of the four subtest areas.

[3761] A. Okay.

Q. Okay.

A. Would you like me to do that computation?

Q. Yes, sir, I would.

A. (Witness complying.) We would use the figure eight, three, zero and minus one, which would be ten. We would add the seven. That would be seventeen. And we would mark off one place, one point seven.

Q. Now, combining step one, the one point seven, with our previous step two, using a B in each of the high school subject areas, which is a two point five –

A. Uh-huh.

Q. – What would the results of step three indicate?

A. It would be a two point one.

Q. A two point one, Dr. Anzalone?

A. Uh-huh.

Q. I just didn't hear you, that's all.

A. Yes, a two point one.

Q. Thank you. Looking now at the Standard Research Service report for the Unviersity of Southern Mississippi,

Dr. Anzalone, I believe it's second in that stack of documents.

A. Yes, it is.

Q. Referring to table L12.5, which is the same table –

A. Uh-huh.

[3762] Q. –to which we previously referred in the Standard Research Report for the University of Mississippi.

A. Right.

Q. Looking – Dr. Anzalone, just following through the same process as predicting first year college GPA using a 12 subtest score in each of the four subtest areas, what would your results for step one be?

A. Five, three, one and zero would be nine for step one.

Q. Is there another step to step one? Is there an ACT constant?

A. Oh, I beg your pardon. An ACT constant of ten. So we're at one point nine.

Q. Utilizing the B in each of the four subject areas, high school subject areas, what would the results for step two be?

A. We would use six and five and three and two would be eighteen. We would add the constant of nine which would be twenty-five. Mark off one. We would add the two steps together, divide by two and the predicted GPA would be two point two.

Q. Two point two. Thank you, Dr. Anzalone.

* * * * *

[3763] Research Service?

A. That is true.

Q. Dr. Anzaloine, I believe you identified a similar document on direct examination, Board Exhibit 275, the IHL-18s. I show you what has been marked U.S. Exhibit

854 for the University of Mississippi. Is that an IHL-18 report for the University of MIssissippi?

A. Yes, it is.

Q. Is that the kind of document to which you referred in your response to counsel regarding your review of information provided by the Board of Trustees regarding their data showing—

A. Yes, it is.

Q. —Comparisons between the ACT composite score and the performance of students after the first year of college enrollment at those institutions? And your answer, Dr. Anzalone, I believe was yes, is it?

A. Yes.

Q. Do you know, in general, Dr. Anzalone, the purpose of this report?

A. The purpose of this report is to identify in tabular format scatter plot information regarding the ACT composite score and whether the student, the entering student, with that score achieved above or below a two point oh during the freshman year.

* * * * *

[3769] Q. The difference between the mean score in terms of high school grades—

A. Uh-huh.

Q. —and the black and white sub-group—

A. Uh-huh.

Q. —is less than the difference between the mean composite score of the black and white students and the two sub-groups, wouldn't you say generally?

A. I would say for these students who entered college in the fall of 1984, yes, there appeared to be—there appeared to be more of a difference in the test score performance than in high school grade performance.

Q. Okay, Dr. Anzalone, I hand you U.S. Exhibit 897, U.S. Exhibit 899, U.S. Exhibit 894-I and U.S. Exhibit 894-J. Referring now, Dr. Anzalone, to U.S. Exhibit 894-I and -J.

* * * * *

[3776] Q. In making the observations that you made today, Dr. Anzelone, regarding the impact of the Board's policies on the pool of students eligible for admission to the Institutions of Higher Learning, you didn't examine the impact of the changes in the minimum ACT composite scores at Institutions of Higher Learning with respect to the overall pattern of scores between black and white graduates in the State of Mississippi, did you?

A. No, I did not.

Q. Dr. Anzalone, in 1973, when the American College Testing Programs technical manual was published, weren't the findings at that time regarding the predictive relationship between high school grades and first year college grades and ACT test scores and college grades, weren't the findings that high school grades were slightly better predictor of first year college grades than ACT scores?

A. I believe that the technical manual indicates that the high school average had a slightly higher correlation with freshman GPA than did the four ACT test scores, yes.

Q. In later research—and I'm referring now to the 1981research bulletin which was made an exhibit to your deposition in January of 1982—you had indicated at that time that ACT, recent research in 1981 indicated that test [3777] test scores had become about as good a predictor of first year college grades as high school grades—

A. Yes.

Q. —but that both test scores and high school grades were still a better predictor of either of those two indices alone; is that correct?

A. Yes.

Q. Is that still the position of the American College Testing Program?

A. I think our latest data reflects that, yes.

* * * * *

[3781] Q. —wouldn't it be easier for black students to gain admission to the historically black institutions with lower ACT composite score requirements—

A. Uh-huh.

Q. —Than to the traditionally white institutions with higher ACT composite score requirements?

A. As it would be for white students, yes.

Q. Are black students represented in greater numbers in the group of students scoring less than 15 on the ACT?

A. I believe so, yes.

Q. And wouldn't the lower scores of the traditionally black institutions continue the over-representation of black students at the traditionally black institutions given their patterns of scores on the ACT?

A. It would in the absence of any increase of admission standards.

Q. To what do you refer, Dr. Anzalone, in terms of the increase in admissions standards?

A. Well, preparation is a critical factor of readiness for college, and at least one indication of readiness for college is performance on an ACT assessment program. That's—

Q. Are you referring to the high school course requirement?

A. Right.

[3782] Q. Okay.

A. So, again, preparation is clearly a factor in achievement. I think we looked at some data earlier today regarding the performance of black students on the ACT assess-

ment in Mississippi who had completed a college preparation or the core program as contrasted to those who had not.

Q. The high school course requirements were implemented in 1986, is that true, Dr. Anzalone?

A. That's true.

Q. And during the interim years between the 1981 admission standards and the 1986 admission standards—

A. Uh-huh.

Q. —the effect that we just described of more black students being able to gain admission to the traditionally black institutions than would be able to gain admission to the traditionally white institutions would have continued; is that correct?

A. True.

Q. Dr. Anzalone, regarding your observation about the substantial flexibility—I believe you characterized it as substantial flexibility—in the admissions requirements established by the Board of Trustees—

A. Uh-huh.

Q. —permitting admission of students from a nine to [3783] fourteen on the ACT score to the Institutions of Higher Learning—

A. Uh-huh.

Q. —the five historically white Institutions of Higher Learning—

A. Uh-huh.

Q. —have you undertaken any effort to examine the number of students, the total number of students that would actually be able to gain admission under the high risk exception for those institutions in any one year?

A. I examined that issue, and if I'm not mistaken, I believe I came out with the figure of somewhere around five hundred based upon percentages of freshman enrollment or the fifty which would be used by institutions.

Q. Would that include all institutions or the traditionally white institutions only?

A. I believe I made that calculation for the traditionally white institutions only.

Q. So that five hundred students, approximately five hundred students, could be admitted to the five historically white institutions with ACT scores of nine to fourteen?

A. Uh-huh.

Q. If individual institutions, Dr. Anzalone, discontinued their practice of admitting students with a nine to fourteen on the ACT, or if they limited their enrollment of students, [3784] say, from twelve to fourteen –

A. Uh-huh.

Q. – only –

A. Uh-huh.

Q. – would that affect your opinion regarding the substantialness of the flexibility regarding the high risk exception?

A. I think I would have to look at the extent to which the students falling in that score range that you identified actually applied for admission to those institutions. I think that would be a serious consideration.

In other words, the option is there, the opportunity is there; I don't know how many of them would take advantage of that.

Q. But given your observations that five hundred student –

A. Uh-huh.

Q. – could be admitted under the –

A. Uh-huh.

Q. – the high risk exception, if individual institutions limited that, it would reduce the number from five hundred to something less than five hundred?

A. If they did, sure.

Q. Are you aware of any institution that has done so; either discontinued its policy of admitting students with less than a 15 on the ACT?

[3785] A. I'm not aware of it, no.

Q. In your preparation for testifying today were you informed that Mississippi University for Women has discontinued the policy of admitting students with less than 15 on the ACT since 1982?

Q. Were you informed of that?

A. I don't recall if I knew that, no.

* * * * *

Q. Would you still, Dr. Anzalone, expect an institution to articulate in its catalog or its admissions materials [3786] notice of their policy to admit high risk students if the institution is prepared to do so under the Board of Trustees' admissions policies?

A. I think that would be appropriate, yes.

Q. Okay. Thank you. Are you aware of any institutions in the State of Mississippi that do not include the high risk admissions policy in their high school catalog, in high school materials?

A. I believe my last review of university catalogs, each included the Board of Trustees' admissions policies, but I have not checked since the more recent policies were promulgated, if that is, indeed, the case.

A. Are you referring to the regular admissions policy at the time you reviewed it or are you referring to the high risk exception?

A. As I recall, and it's been some time since I actually reviewed the catalogs of the institutions, but the institutions catalog practice has been to – at least at one point in time, was to actually duplicate the Board's policy statements in the admissions section of the catalog.

Q. And this was the practice at one point in time?

A. I believe I can say that with some certainty, yes.

Q. Dr. Anzalone, I show you what has been identified as U.S. Exhibit 053.

A. (Witness examining document.)

[3787] Q. Dr. Anzalone –

A. Yes, ma'am.

Q. – U.S. 053 is an agenda for the meeting of the instruction administration and policy committee of the Board of Trustees dated February 1, 1979. The agenda indicates there was a presentation and discussion by Dr. Sam Anzalone, the regional director of ACT Educational Services. Did you meet with the instruction administration policy committee of the Board of Trustees staff in 1979?

A. I did.

* * * * *

Q. The agenda indicates there were several topics of discussion at the meeting: the desired results of student testing, the extent that testing programs can predict success of college freshmen, what various measures of achievement would be best for minimum admission standards, historical data of enrollees in Mississippi universities and the test performance level of the major feeder high schools.

Other items include an analysis of the ACT scores of [3788] freshmen, a review of the remedial programs, a discussion of the correlation among ACT scores, high school grade point average and rank in class, a review of the statistics identifying graduates admitted with an ACT score less than twelve and a review of the achievement of the graduates of the Schools of Education in the NTE examination.

I refer only to those portions that have to do with the ACT assessment.

A. Uh-huh.

Q. In responding to questions about the best way to predict college success, you indicated to that committee, didn't you, that the use of the—of a single cut-off score did not take into account high school average and other considerations that might very well be appropriate, and that was certainly not the American College Testing Program's recommendation, that a test score alone be used; is that correct?

A. That's correct.

Q. Were you aware at this meeting that some Institutions of Higher Learning in the State of Mississippi were already employing an ACT socre of fifteen as the minimum requirement for admission to those institutions?

A. Yes, I was.

* * * * *

[3791] Q. Particularly in the historically white institutions there wouldn't be positions for each of the black students who scored from nineteen—or nine to fourteen, would there?

A. No, I guess there would not be, assuming they applied.

Q. Okay. And whether they applied might depend on how well catalogs and brochures informed then that there was—there were positions for which they could apply; is that right?

A. And recruiting efforts, yes.

Q. Yes to my comment about catalogs and brochures?

A. Yes.

Q. I'm showing you Board Exhibit 190 concerning the relationship of ACT scores and Nelson Denny reading scores.

A. Yes.

Q. You refer to a—you refer to ACT subtest scores of nine in English and social studies as being equivalent to about a ninth grade reading level?

A. I believe so.

Q. If you look at page five and about in the middle of the page where it describes the steps, where it says number two, it says to specify sixty-eight percent confidence [3792] interval –

A. Uh-huh.

Q. – for the predicted raw scores add and subtract fifteen points from the predicted form C raw score?

A. Yes.

Q. Now, if we go to the table which you used, which I think was table six?

A. Uh-huh.

Q. So the scores of nine and nine were equivalent to a raw score of forty-three?

A. Yes.

Q. So to take an account of the standard error, you have to add and subtact fifteen to forty-three; is that correct?

A. Correct.

Q. So then when you go to page nine, I think you used table eight?

A. Uh-huh.

Q. So at the top of the range raw score fifty-eight is equivalent to a twelfth grade reading level?

A. Yes.

Q. And subtracting the fifteen from the forty-three is off the table; is that right?

A. Uh-huh.

Q. Is that right?

A. Yes.

[3793] Q. But the way this publication – this publiction indicates that the way it should be done is to take an account of the standard error; is that right?

A. Well, again, it's provided so that individuals can estimate class reading levels from the ACT assessment program sub-tests.

Q. But the way it describes the procedure for doing that you should take account of the standard error and go fifteen points above and below the raw score, the way I just did it, isn't that right?

A. To indicate that the student's reading level would be somewhere in that range, yes.

* * * * *

[3796] Q. This statement indicates that people were rejected because they had a score below the minimum; is that right?

A. Right. So they are denying students below nine.

Q. Based on the test score?

A. Based on the test score.

Q. And that's inconsistent with those policies to which Mrs. Johnson-Betts referred, isn't it?

A. I think it – yes, in a narrow sense, I would agree with that, yes.

Q. Okay. With – and with respect to Plaintiff's 300-H, the fourth page –

A. Three hundred –

Q. H, the other one, the fourth page.

A. Yes, okay. Okay.

Q. The University of Southern Mississippi?

A. Uh-huh.

Q. That indicates a hundred and sixty-six applicants rejected because ACT-SAT score below minimum?

A. That's what it indicates.

Q. And the conduct which that represents also would be inconsistent with those policies?

A. I think my response would be the same as to the previous question, yes.

[3797] Q. What would be your response?

A. I think in a narrow—in a narrow sense, that would be true. Again, I don't know how they counted to get the one sixty-six. I don't know if they are counting students totally outside—applicants who are totally outside of their exceptions policy or not.

Q. I believe you testified that under the current Board policy even if a student meets the core requirement, the student can be denied admision based on being below the minimum test score?

A. I'm sorry, counselor, would you repeat your question?

Q. I want you to assume a student who meets the core course requirements—

A. Okay.

Q. —but has an ACT test score below the minimum for the particular institution for which the student applies.

A. Uh-huh.

Q. The Board policies allow the institution to reject the student based on the test score; is that right?

A. Right.

Q. Based on the test score alone?

A. Based on the test score alone.

Q. Isn't that, again, also inconsistent with the ACT policies to which Mrs. Johnson-Betts referred?

A. Well, I think what's important there is to note that [3798] the student's admission was considered in the context of the pre-college curriculum and the test score.

Q. The student could have gotten fine grades on the pre—on all the courses for the pre-college course requirements?

A. Correct.

Q. And then b rejected because of the test score; is that right?

A. That's correct.

Q. And that's inconsistent with the policies, isn't it?

A. I would agree with that inconsistency, yes.

* * * * *

[3799] Q. —in determining how well a prediction is being done, doesn't ACT recommend that universities make separate studies regarding different racial groups?

A. Yes, that that should be examined.

Q. And, again, ACT will help a university do that without [3800] cost; isn't that correct?

A. That's correct.

Q. And isn't it the case that Mississippi universities haven't undertaken that type of study?

A. I'm not aware that there has been any in recent years through the ACT Research Services.

Q. And you've reviewed the materials, haven't you?

A. I reviewed the materials, yes. I believe, Counsel, in preparation for my 1981, 1982 depositions, I believe at that time there had been an example of such sub-group analysis, but I would really have to check.

Q. Would it be consistent with your views, Dr. Anzalone, to testify on the one hand that the Board's use of the ACT assessment is educationally reasonable, and on the other, that it's not consistent with ACT policies on the use of the ACT assessment program?

A. I think that taken in the totality of the standards, the standards are reasonable. I admit that some of the wording related to ACT recommendation or policies may be a bit inconsistent with the procedure that the Board is using.

Q. And the ACT recommendations, you agreed, are designed to promote fairness in selection and accuracy in selection?

A. Oh, yes.

* * * * *

[3803] Q. You referred – did you refer to a study in which ACT participated that looked at the issue of how many schools in the country did use cut-off scores? You referred to some date from 1980 to more recent times?

A. I didn't use it in the context of cut-off scores. There has been a fairly recent national survey on admissions practices in American colleges and universities. It was a cooperative project of ACRO and ACT and the College Board and I believe the American Council on Education and perhaps one or two other organizations.

And, in essence, that is – at the present time – at the present time, that represents probably the best indication of what is occurring on campuses by way of changes in admissions requirements or patterns, yes.

Q. Isn't it a fact that it indicates that approximately two-thirds of public and private universities do not have a minimum cut-off score on the ACT or SAT?

[3804] A. I would have to – I don't recall that from memory.

Q. Okay. Are you referring to – is it titled Demographic Standards and Equity Challenges in College Admissions?

A. Yes.

Q. On page twenty-eight, I'm going to give it to you –

A. Uh-huh.

Q. – does the sentence appear: About one in three institutions has a minimum test score requirement, from which I drew the converse and said two-thirds don't?

A. About one in three such institutions has a minimum test score requirement.

Q. So the converse would be that two-thirds don't?

A. Correct. Among colleges using the ACT assessment, there does appear to be an increase in minimum

standards on the ACT composite score for public colleges. At least for those using them.

Q. All right. But still what it says there is that about one-thrid have a minimum score?

A. Uh-huh.

* * * * *

[3806] Q. In terms of the Georgia system—in discussing with the Georgia system adding the ACT as an alternative, was your [3807] role to try to convince them to use the ACT?

A. Yes.

Q. Is that generally one of your roles; to try to convince people to use the ACT?

A. (Witness nods head up and down.)

Q. And the different tools that ACT provides?

A. Yes.

Q. I understood you, in responding to a question from Mrs. Johnson-Betts regarding the correlation between self-reported high school grades and first year college grades, to say that the correlation is, quote, "not strong in every case." Do you recall characterizing it that way?

A. I don't recall exactly what my response was. I indicated that I would not characterize it in the language that she used.

Q. For example, if one of the correlations for the University of Mississippi between the four subtest scores and grade point average was point forty-five—

A. Uh-huh.

Q. —would that be one where you wouldn't call that particularly strong?

A. Generally, correlations between about four point oh and about point seven oh are very useable for college and university work.

When you look at all of the correlation studies, all [3808] the validity studies that have been done, typically anything around point five oh would be common, and so point four five is a little below point five oh and so I said that it is not as strong as five oh.

As you move on up to point five oh and to point six seven or whatever, obviously the relationship gets stronger between the predictor variable and the criteria.

Q. Okay. If one is trying to understand or explain differences between grade point averages that a group of students obtained –

A. Okay.

Q. – and one looks to information that's available on their grade point average –

A. In high school or college?

Q. In high school.

A. In high school? Okay.

Q. – And then we learn there's a point four five correlation, in terms of figuring out how much is the difference between the students in this group that this explained don't we square the point four five and then learn that it explained about, well, something under twenty-five percent of the variance? Isn't that the way you do that?

A. When you square the simple order correlation into the so-called capital R correlation, as you just did, and you [3809] suggested it would be point two two or point two three, what that explains is the variance in the criteria. The variance in the criteria are made up by the variance in the predictor variable of high school averages, you got a lot of high school averages in that predictor variable and you've got a lot of freshmen GPAs in the criterion, so the squared R identifies the extent to which the variance in the criterion I believe is caused by the variance in the

predictor variable. I'm not a psychoatrician, but that's my understanding of that concept.

Q. Well, doesn't that, in effect, tell us that we need to look to a lot of other factors just besides that one of self-reported grades to figure out why the students had different college grades? Isn't that what that means, in effect?

A. Again, I think, you know, looking at predictor variables, be they some indication of high school performance, be they the courses taken, we've got research that indicates that both certainly contribute, we also need to look at other conditions, perhaps, that may be affecting the correlation.

Q. Isn't the bottom line that this is one of the reasons why ACT recommends that you don't just—

A. Uh-huh.

Q. —use one test score because even with correlations [3810] up to—well, between point four and point seven, there's a lot of other factors explaining differences in college grades.

A. There are other factors, that's correct.

Q. So that's—isn't that part of the reason that ACT recommends that you look at other factors?

A. Well, certainly if you're looking essentially at predictor—at prediction validity, that would be true, yes.

[3824] * * * * *

TESTIMONY OF THOMAS BORDEAUX.

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DIRECT EXAMINATION

MR. GOODMAN:

Q. Where do you live, please, sir?

A. Meridian, Mississippi.

Q. What is your educational background?

A. I have a bachelor's of Arts Degree from the University of [3825] Mississippi and a LLB degree from the University of Mississippi.

* * * * *

Q. Do you hold any official position in state government?

A. I am a member of the Board of Trustees of State Institutions of Higher Learning.

Q. When were you appointed to the Board?

A. In 1980.

Q. By whom?

A. By Governor William Winter.

* * * * *

[3827] Q. When you went on the Board, what was the racial composition of the membership?

A. We have a thirteen person Board, twelve of whom are regular members and the thirteenth member is a LaBove Trustee that votes on matters only affecting the University of Mississippi. Of those thirteen persons, there were ten white and three black of the regular Board, sort of speaking, of twelve persons. We have twelve-year appointments. Again, three black and nine white.

Q. At the present time, what is the racial composition of the Board?

A. The same.

Q. How are officers of the Board selected?

A. They are selected by vote of membership of the Board.

Q. During your tenure on the Board, what office or positions, if any, have been held by black Board members?

A. Dr. Robert Harrison, who is a dentist from Yazoo City, has served as both a Vice-President and President of

the Board. He was the first black Board member ever to serve. He was appointed by Governor Waller.

Ms. Betty Williams, elementary school principal from Columbus, a black lady, and she has served as Vice-President of the Board and took office as President on the 8th of May.

[3828] Q. So she is currently President?

A. Yes.

Q. During your tenure, what committee positions, if any, have been held by black Board members?

A. Well, they have served on various committees just like everybody else.

Dr. Harrison, I recall, was Chairman of the Policy Committee; Mr. Watson, George Watson from Pass Christian and was black, served last year as Chairman of the Building Committee.

They have served on all committees. There has been no distinction.

Q. What about Mr. Rushing?

A. Mr. Rushing is a banker from Gulfport and he was recently appointed and served as Chairman of the Finance Committee of the Board.

* * * * *

[3830] Q. From your experience, observation and participation, to what extent has racial identifiability of institutions been a factor in Board actions?

A. Well, necessarily the Board is aware that we have got three institutions that have been predominantly black institutions and five that have been predominantly white institutions.

In the six years I have been on the Board – seven years that I have been on the Board, I have not seen any single action taken by the Board that had a negative or adverse effect on a black institutions that was taken, because it

was a black institution. We have—the Board has had and had

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[3831] There have been occasions when we have allocated funds to the regional institutions contrary to what would have been done if—If a formula were applied, and since two of those regional institutions are for blacks, I guess what was done, although it was not done as a racial undertaking to but try to help the regionals, whether they were white or black.

We have encouraged the employment of white faculty members at black institutions, we have encouraged the employment of black faculty members at white institutions. We have tried to encourage the recruitment of white students at black institutions and vice-versa.

* * * * *

CROSS EXAMINATION

[3853] Q. Mr. Bordeaux, what was the subject matter of your baccalaureate degree, your major?

A. History.

Q. History?

A. Yes.

Q. In terms of your—You said you had a civil law practice. What kinds of cases or matters do you work on?

A. Most everything that walks in the door.

Q. Could you give me some examples?

A. Well, yes, sir. We handle civil litigation, we do corporate work, we do domestic relations work, we do estate work.

We don't do any tax work, don't know how. I don't have much opportunity to do criminal work.

Q. Did you have retain agreements with any bodies of the Government? Do you have any retainer agreements like with a [3854] School Board?

A. Yes, right. One of my partners represents the Local Housing Authority.

Q. How about you personally?

A. No, no. We used to – I used to be the City Attorney for the City of Meridian, but it got to be that we ran into too many conflicts, so we quit.

Q. Prior to your employment with the Board, have you been involved in politics in the State?

A. As a candidate, no.

Q. In terms of working with candidates?

A. Sure. I try to do what I consider is a good citizen, be active in the political process.

Q. Were you active in Governor Winter's election?

A. Yes. He is a fellow that I had a great deal of respect and admiration for, and I was a consistent supporter of his.

Q. Were you involved in his campaign?

A. Every one of them.

Q. Including when he was elected as Governor?

A. Yes, sir.

Q. If I asked you what qualifications you felt you had to be appointed to the Board of Trustees at the time Governor Winter appointed you, what would you say?

A. Well, I would start off by telling you that I come from a family of people who have a high regard for education. My [3855] granddaddy had ten children and he saw to it that every one of them got a college education.

My father was a school teacher. I had an aunt that was a school teacher. I have always been interested in education. I used to serve as Chairman of the Education Committee with the local Chamber of Commerce. I tried to be supportive of it.

As far as any formal professional training as an educator, as I have already indicated, I had none whatsoever.

Q. Isn't it a fact that in 1972, Governor Waller appointed four white persons and one black person to the Board of Trustees?

A. Yes, sir.

Q. And in 1976, Governor Finch appointed four white persons and one black person to the Board of Trustees?

A. Yes, sir.

Q. And in 1984, Governor Allain appointed four white persons and one black person to the Board of Trusteess?

A. Correct.

Q. Do you regard that as a coincidence?

A. I never thought about it. Coincidence in what way? I really don't understand your question.

Q. A coincidence that four Governors four years apart each appointed four white persons and one black to the Board of Trustees?

A. I wouldn't call it a coincidence. I would just call it [3856] a fact.

Q. Well, do you have some explanation for it, other than maybe it is the custom or the practice of appointing on the basis of race, four white persons and one black person?

A. I stopped trying a long time ago to figure out what went through a Governor's mind.

Q. Do you think in terms of qualifications that more than one black person could have been appointed each time?

A. Well, I have never considered the matter.

Q. Has each governor had an opportunity to appoint the LaBove Trustee?

A. Yes.

Q. And was each person appointed to that position white?

A. Yes.

* * * * *

[3857] Q. Are there Board members who had prior involvement in the area of higher education?

A. Presently present serving on the Board?

Q. Yes.

A. William Jones from Jackson used to be associated with the University of Mississippi, so I – He has had some prior involvement in higher education.

Q. In what kind of position?

A. I am not sure. I think he ran the continuing education – May have a different name, but he was one who arranged to have short courses and seminars and all of that sort of business. He may have taught some too. I am not sure of that.

Incidentally, I – I forgot to mention that I used to teach history at the University of Mississippi when I was in law school. I taught two courses in American history. I [3858] don't know what that qualifies me to do, but for the purpose of the record, I thought I would mention that. I had forgotten that.

Q. Did you – Can you think of any other Board member who had prior involvement in higher education?

A. It is not a subject that I have inquired into, but I cannot think of any.

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[3862] **TESTIMONY OF RICHARD DOBER.**

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DIRECT EXAMINATION

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Q. Mr. Dober, where do you live?

A. I live in Cambridge, Massachusetts.

Q. Would you please describe to the Court your educational background?

[3863] A. I graduated from Tredyffrin-Easttown High School in Berwyn, Pennsylvania, attended college in New York City and received a B.A. in design and took my graduate work at Harvard University.

Q. All right. And what degrees did you receive?

A. A master's in planning.

Q. Do you have any professional affiliations or appointments?

A. Yes. I am an active member of a number of professional organizations. I am a member of the American Institute of Planners. I was a founding member of the Society of College and University Planners. I am a member of the American Renaissance Association. I am a reviewer for the National Science Foundation. I was an active member of the National Educational Research Information Clearing House.

* * * * *

Q. Have you had any special appointments or awards that you consider important?

A. Some, yes. I was a sheltered fellow at Harvard University.

I received a national endowment of the arts grant to study college and university architecture.

Q. Mr. Dober, have you had any academic appointments or lecture experiences?

A. Yes. I have been a visiting critic in design at the Harvard Graduate School of Design.

[3864] I have been a senior lecturer at Massachusetts Institute of Technology.

I have been a member of several research groups at those institutions.

I have held short-term appointments in teaching campus planning, both in the United States and abroad, and I often lecture on college and facility planning.

Q. Is it possible for you to estimate how many such lectures you have given?

A. As my wife says, I do a lot of talking, and I would guess several hundred over the last thirty years.

Q. Mr. Dober, what is a sponsored study tour?

A. My resume lists sponsored study tours. These are activities in which the foundation or client or Government will sponsor my visits to certain facilities or campuses for the purpose of learning about them, making evaluations and using that information in my work.

Q. Could you describe just a few of those sponsored study tours, and who sponsored them and their purposes?

A. They vary from year to year, according to my practice. One that comes to mind was a visit to Great Britain at the time of when the new universities were being planned, and I was asked by a foundation to examine what was going on there and to see whether there was any experience or ideas that could be applied usefully in the United States. That resulted [3865] a small book on the subject.

Q. You mentioned a book. Have you otherwise written in the field of campus and facility planning?

A. Yes. In 1962, I published a book called *Campus Planning*, which is, I think, still considered to be the authoritative work in that field.

I have published several other books on planning and design. I have been the editor of over fifty books on planning and design. I have written a number of articles in the field, and the most recent will be published this fall. It is in the *Encyclopedia of American Architecture*, and it is a substantial review of campus planning in the United States.

Q. Mr. Dober, what is your current professional occupation?

A. I am a campus planning and facility consultant.

Q. And how long have you been doing that?

A. Almost thirty years.

Q. Could you describe briefly what sort of activity that profession entails to the Court?

A. It is changed as higher education has changed over the years. The core of the activity is to advise colleges and universities on aspects of growth and facilities, campus planning, building planning and so forth.

Q. Does it include analysis of existing facilities?

A. It does, yes.

Q. How many colleges and universities have you so advised?

[3866] A. About three hundred.

Q. Now, is your work as a consultant generally restricted to a particular region of the United States?

A. No, my work has taken me through most of the states and overseas, as well.

Q. What sort of activities have you had overseas?

A. We have served UNESCO and the World Bank in planning facilities for developing countries, as well as mature countries.

We have created campus plans in about twelve nations overseas.

We have participated in international conferences on campus planning and facility planning.

Q. Could you briefly describe your recent work in China to the Court?

A. Yes. We were asked by the People's Republic of China, which is now in the process of westernizing higher education to advise them on campus planning and facility planning using American models.

Q. Has your practice been largely in the private or the public sector of higher education?

A. In terms of percentage of clients, it has been private, but I would say sixty/forty private to public.

* * * * *

[3867] MR. RAY: Your Honor, we tender Mr. Dober as an expert in the analysis of higher education facilities.

* * * * *

[3868] THE COURT: Very well. He will be accepted in that role.

* * * * *

Q. Mr. Dober, when did you first become involved in analysis of the public higher education system of Mississippi?

A. In 1979, the Academy for educational Development and Arthur Anderson were engaged to do a study by the State legislature of all aspects of higher education as it relates to public policy.

Since we had worked with AED over the years, they asked us to review the facility portion of that study, which we did.

Q. Were you aware of this lawsuit at that time?

A. I was not.

Q. Have you had further involvement in the State of Mississippi after the AED study?

A. Yes.

Q. And what did that involvement entail?

A. I worked there—My work there involved the preparation of a report published in 1981 called the Capital Improvements Study.

Q. And were you aware of this lawsuit at the time that you did this report or work?

A. I was not.

* * * * *

Q. Yes, sir. And how much time was spent developing this study?

[3877] A. Approximately eight months.

Q. And when was it presented to the Board of Trustees?

A. Our first view of this was in December of 1980, the full report in draft form in May of 1981 and a concluding presentation of the report in August of 1981.

Q. And when were you first contacted with reference to this lawsuit?

A. The day we made our final presentation to the Board in August of 1981.

Q. What were you asked to do, what assignment were you given?

A. We were asked to stand behind the facts that are in this report and to apply them to a key question, namely in looking at the information, is there any relationship between the distribution of space and the racial characteristics of the institutions.

Q. And what methods did you use to undertake that assignment?

A. We prepared an evaluation of analysis report for the Board's use which involved gathering data from the 1981 report, arranging those in tabular form and also looking at certain other key questions in making our evaluation.

Q. And I believe you said you were looking to see whether there was a relationship between distribution of space and the racial identity of institutions.

A. Uh-huh.

Q. What did you look for to find if there was a relationship?

[3878] A. What we do was to take the data base, the information in this report and organize it into a series of

summary tables and graphs called the IHL space comparisons.

Q. Is that a document marked as Exhibit Board 304, please, sir?

A. It is, yes.

* * * * *

A. We then tabulated what I believe to be, in my opinion, in my judgment the key factors which is square footage per FTE per institution by the HEGIS categories, and this is summarized in this report. We then rank ordered the institutions. By that I mean in descending order of space, and looked at the data, and—

Q. And did you also include the criterion you mentioned on the condition of the facilities at the institutions?

A. Yes.

* * * * *

[3881] Q. Look at page eight, if you would, Mr. Dober. Please describe what that table involves and why you included it, whether there were any conclusions you drew from that table.

A. This comes down to the core, the core of the core, if I could use that expression. The net assignable square feet for all non-residential purposes. I think given three thousand one hundred and twelve colleges and universities in the United States, we will see fluctuating patterns in residential space depending upon a whole series of variables that don't organize themselves into a rational pattern.

If we look at college and university space, however, non-residential, then the kinds of space available and the size tends to have a universal characteristic to it.

In other words, most places will have a certain amount of space of a certain kind to carry out their educational

missions, irrespective of the private or public sector, irrespective of region and so forth.

Q. Okay. Did you reach any conclusion with respect to the information on page eight?

A. Yes.

Q. What does that include?

A. That in terms of net assignable square feet, Jackson State University is at the bottom of the list and Mississippi University for Women is at the top of the list.

Q. Are there any conclusions related to the racial identity [3882] overall?

A. The rest are interspersed in a pattern that's irregular and would not suggest to me a relationship to the racial composition.

* * * * *

[3888] Q. Now that we have looked at the distribution of space as you arranged it, do you have an overall conclusion with respect to the distribution and amount of space in the state public institutions of higher learning when this study was done?

A. Yes.

Q. And what's that conclusion?

A. That—in terms of the institutions in the State of Mississippi?

Q. Yes.

A. There is no relationship between the distribution of space in the aggregate and by function that would suggest a profile of racial characteristics and its association with the distribution of space.

* * * * *

[3889] Q. What does this table describe?

A. We had to find some way to give—produce an index on condition given the amount of data available to us

and it was my judgment that by taking the number of citations of subsystems that were in poor or worse condition and organizing that information by sub-systems, we could get a useful profile of the condition of buildings at each institution, and then we could summarize that information by dividing the number of such elements by the number of buildings and getting a spread of condition index that I thought was fairly reliable.

Q. And what does that index represent?

A. It represents the relative degree of R and R requirements at each of the institutions.

Q. Did you describe what category four and five were?

A. Yes, that's described in the report. It's on page – the second page in from the appendix which would follow page seven – eight.

Q. Okay. And what is a brief description of category four and five?

A. Category four are those buildings which are in poor to fair appearance. They have functional problems. There are significant code violations. They need immediate attention. They could be reused after major repair, renovations or reconstruction of buildings and/or sub-systems.

[3890] Q. And five?

A. Five are buildings that are so poor they are practically unusable. Major code violations. Some of the systems were inoperable or dangerous. The building should be close to being condemned or abandoned. I added one phrase which I thought was redundant: It needs immediate attention.

Q. And did you find such conditions on each campus within the state?

A. Yes, I did.

Q. When you summarized these conditions on page twenty-seven, what was your analysis? Did you rank the institutions?

A. Yes, I did.

Q. And what was the result of that ranking?

A. Well, Alcorn State University, based on this analysis, needs the most attention. Women and the University would be next. Then there's a cluster of four institutions which rank from two eight oh to two point eight five and in descending order, Mississippi State, Jackson, Southern and Valley, and then Delta was in the category by itself that had the fewest.

Q. And what's your overall conclusion as related to your assignment with respect to conditions?

A. Again, I don't find a pattern in these tabulations that would suggest a relationship between the racial composition of the institutions and their position in these tables.

* * * * *

CROSS EXAMINATION

[3897] Q. Now, Mr. Dober, based upon your knowledge and your professional experience, do you believe that you have explained all the data and undertaken all analyses necessary to complete your assignment in this case?

A. In my judgment, based on my experience and in my opinion, the information that I have just reviewed with you is that which is appropriate and useful, applicable to answering those [3898] questions.

Q. And, finally, what is your final conclusion with respect to distribution of facilities upon Mississippi's public institutions of higher learning?

A. I do not see, based on these studies, a pattern that would suggest that the distribution arranges itself in terms of the racial characteristics of the institutions.

* * * * *

[3899] TESTIMONY OF RICHARD DOBER

Q. Is it true they needed additional dormitory space at that time?

A. I don't know.

Q. (Attorney gesturing.)

A. You asked me whether I recalled it and I said I probably did make that statement, but I have not studied the issue so I don't have an answer.

Q. You never studied the issue as to whether Jackson State University, Mississippi Valley State University needed additional dormitory space.

A. That's correct. I've never done any study as to what the institutions need based on programs, missions or other kinds of requirements.

* * * * *

[3905] Q. And you're not here today giving any testimony about in terms of a critique of anyone else's testimony in this case?

A. Absolutely not. The only reason I'm here and the total focus of my – I was going to use the word presentation – my remarks, my testimony is that I was asked to do a study on the question of facilities. I've selected, in my judgment, what I considered to be the key factors, the important indicators, which is the amount of square footage available per FTE in the aggregate and by function, and that's all I have to offer in the way of expert witness opinion experience.

Q. Okay. And also I take it you're not expressing any opinion as to which institution has the better facilities in terms of attracting students to its campus?

A. No, I'm not.

* * * * *

[3906] Q. Okay. Do you recall your conclusion expressed in your report that Jackson State is severely underbuilt?

A. Yes, I do.

Q. And that is still your opinion today, is it?

A. Yes, indeed.

Q. What do you mean by underbuilt?

A. In terms of the focus of my remarks, that is the square footage available per FTE, it is below what I would consider [3907] to be, in most instances, with one or two exceptions, the national average and it's the least of all the eight campuses here in Mississippi.

Q. Now, when you're talking here about the, again, net average square foot per FTE –

A. Uh-huh.

Q. – I guess it's obvious, but if you would answer the Court, that this is driven by the actual full-time equivalent enrollment, that is, as the FTE goes up, your net average square footage per FTE would go down given the same physical facilities, is that correct, sir?

A. That's correct.

Q. And at the time of your 1981 study, I believe you testified on direct that essentially Alcorn had the greatest problem in terms of severe problems with buildings? Is that a fair statement of your testimony?

A. Based on our study of the indices that we created, yes.

Q. And again, based on your study of these indices which you created –

A. Uh-huh.

Q. – except for the medical centers, is it your recollection that Delta State was about the best of the facilities?

A. In terms of condition?

Q. Yes, sir.

A. Yes.

[3908] Q. And that also that Mississippi Valley State was about at the state-wide average?

A. I'd have to go check the – to be sure.

Q. Could you do that, sir?

A. Yeah.

Q. I believe you were testifying to page twenty-seven of your report.

A. Okay. Based on the indices on page twenty-seven, which is page three twenty of the larger report, Mississippi State, two point eight five; Jackson, two point eight three; Southern, two point eight one and Valley, two point eight oh. As compared to four point eleven at Alcorn, three six at Women, three four at UM and then one point twelve at Delta.

Q. All right. Okay. Now, could you translate those for us, sir, not in terms of some standard but basically the lower numbers are better and the higher numbers indicate—

A. All things considered, yeah.

Q. The higher numbers indicate a—

A. Worse conditions, yeah.

Q. And that according to your study, then Mississippi Valley State came out about on the average?

A. It's in the middle cluster, yeah.

Q. Okay. Now, this average is composed, if I'm correct, of citations, and I take it by that you mean buildings with elements reported in your category four and category five?

[3909] A. That's correct.

Q. And that's an average of citations per total building?

A. Yeah.

Q. And what we have here, then, is an objective way of saying: Here, I can point you to you this is wrong, this is wrong and a numerical accumulation; is that correct?

A. Those who are interested in knowing specifically what the conditions are, sub-system by sub-system, can

refer to the larger report in which it's listed in some detail. This is a summary of those things in the way that I thought would be useful.

Q. I would have a tendency to agree that anything that comes in one page is better than looking at something that is a couple of hundred pages and we appreciate that effort, but I think what I'm trying to get at here is: when you present this chart, you're studying the square footage as opposed to really the quality of the square footage?

A. That's absolutely correct.

Q. And—

A. Except that quality may be a reflection of condition, so I would like to make that distinction.

Q. Okay, you got my next question already?

A. All right.

Q. I think you're right with me or a little ahead of me, that essentially what we've got here is that obviously you [3910] highlight those elements of the campus that are substandard, deficient and need absolute immediate correction in order to be used, is that correct?

A. Uh-huh.

Q. But that other than highlighting, you did not make a judgmental quality difference by saying that this is an A facility, this is A+, this is C, this is C+, is that correct?

A. That's correct.

Q. And perhaps belaboring the point—you've been an expert witness before, sir, that's correct?

A. Never. And I look forward to never being a witness again.

Q. Having been an expert witness once myself, I sympathize with that. You certainly have been in classrooms where the square footage would be, and let's take an arbitrary square footage of two hundred square

feet, and that in one incident – both classrooms hypothetically would be two hundred square feet. Is this a fair small size classroom?

A. Maybe.

Q. Four hundred square feet then?

A. Four hundred feet.

Q. Might be a little bit better?

A. Okay.

Q. And in one instance although the windows are sealed and [3911] the in lights aren't so glaring that you can't read the book, that you might have a – within that quality, you may have one facility that has the outstanding state-of-the-art, ergometric I think is the term, seats, and the other one would have the old desks that I think a lot of us are familiar with; is that correct?

A. Yes.

Q. And both of those would show up on your study –

A. No, they wouldn't.

Q. – as meeting the requirements, sir?

A. We have not made a study of the quality of space other than condition.

Q. Okay. So you never differentiated between those two types of classrooms?

A. In our study, no.

Q. They would both be space available for use?

A. In both the 1981 – Well, since this study is a derivation of the 1981 study, we have not introduced qualitative factors in any of our studies.

Q. Now, I believe you also indicated that you really didn't go into the whole area of how the state allocated its resources amongst the universities?

A. No. My life isn't long enough to do that.

Q. And you also did not may any study about whether Jackson State University would benefit from the acquisition of more [3912] land, is that correct?

A. I'm not sure. We may have made some reference to that in our 1979 study in a generic kind of way.

Q. What –

A. By that I mean, at that time, we pointed out that there were many things that could be done in the abstract at all campuses that might improve their situation. I don't recall putting it at home to any particular institution.

Q. Now, you did testify earlier today that Jackson State was underbuilt?

A. That's correct.

Q. Did you do any studies about – for lack of a better term – how crowded the various campuses were?

A. No.

Q. So your testimony is essentially that Jackson State would benefit from more buildings, but you do not express an opinion as to whether they need more land for those buildings?

A. At the sake of redundancy and trying to be of some help, the nature of our study focused on what I thought in my experience were key factors in addressing the issue of facilities. And, in my view, the best indicator, the most valuable, the most useful one is square footage per student.

I did not study any other aspects of this other than [3913] building condition, and I have no opinion to offer on other such factors.

Q. And, again, at the risk of being redundant here, that's square footage without attempting to differentiate between quality of square footage as opposed to its minimal adequacy?

A. Again, I can only repeat what I just said: the nature of what I have said and what, in my opinion, is the key factor.

And questions that lead me to other kinds of areas, I do not feel prepared to offer an opinion. I have not studied it and I have no opinion.

Q. And also, sir, your assignment back in 1979-80 was not, as I understand it, to project future requirements—

A. That's correct.

Q. —for the system? That essentially all you did is relay request of institutions for future buildings, although within those categories you did generally prioritize between—for lack of a better term—emergency needs and then those that were immediate but less emergency?

A. I can be a little more helpful than that. On page five two of our report with the bravado of a consultant who tries to do the right thing, we took those lists of capital requirements and suggested a priority list for the Board, and those are described on page five two. And they did begin with [3914] items that we called hazardous conditions, life safety actions and events, requirements that would be useful for accreditation, legal compliance, immediate cost containment, believing that such investments would moderate later higher repair and renovation bills. Energy conservation, because at that time all the indices were pointing to a budget bleed because energy was not—the cost of that was getting higher and higher. Historic conservation, complete projects that were not complete, support missions, and to advance the institution and deferred maintenance. And there was also a system here of making capital appropriattions to begin detailed planning.

Q. And again, sir, on the topic of what you didn't do, and you just mentioned legal compliance there. Are you referring there, I take it, to building codes and safety codes; is that correct?

A. Yes.

Q. You're expressing no opinion about compliance with any of the requirements of the law to desegregate the institutions?

A. No.

* * * * *

[3916] Q. Mr. Dober, did your study, in your study, did you look at whether the state's allocation of resources for higher education with respect to facilities maintained and/or changed the character of the traditionally black institutions?

A. No, I didn't.

Q. Did you look at whether or not the facilities at Jackson State are adequate for, say a research institution?

A. No, I didn't. We did not make a correlation between program and space.

Q. Did you look at your relationship between resource allocation and the character of the particular institution?

A. I don't understand the question.

Q. Is there a definition for character of an institution?

A. I'm not aware of—as I say, I don't understand. Can you [3917] help me with—when you say character, what do you mean?

A. I'm asking you, is there a definition of character of an institution?

A. Is there a definition of character?

Q. Right.

A. Not that I'm aware of.

Q. Were you aware of that when you gave your deposition in 1987?

A. I didn't give a deposition in 1987, I don't believe. Did I? No.

Q. You didn't give a deposition on March 5th, 1987?

A. I did, I'm sorry.

* * * * *

[3919] Q. Now, what page is this in this particular deposition?

A. That would be page fifty.

Q. Own. Come down to line seven and read the question.

A. Okay. Okay. (Reading): Mr. Dober, do you believe that facilities form part of the character of an institution?

* * * * *

[3920] Q. We're on page fifty-one, Mr. Dober, and the question is (reading): Do you believe that it does form part of the character, Mr. Dober? And what's your answer?

A. (Reading): It's well-defined by good campus planning.

Q. And the question is (reading): Could you restate that definition?

A. Yeah. (Reading): It's the accumulation of the physical ambience, buildings, landscape, open space, architectural style, condition, pattern of use, the nature of the environments.

Q. And the next question is: Would you describe the relationship between facilities and the character of an institution?

A. Uh-huh, I just did.

Q. Okay. That was your answer there, too?

A. Yeah.

Q. All right. Now, do you understand what I'm referring to when I ask you about character?

A. I do now. I didn't understand it when you asked the question.

Q. Can you explain to me – Now, let me ask you this question: In your study, did you look at the relationship between resource allocation and the character of the –

A. No, I did not.

Q. Okay.

[3921] A. No.

Q. Well, let me complete the question.

A. Sure.

Q. – character of the traditionally black institutions?

A. No, I did not.

Q. Well, what about character of the traditionally white institutions?

A. No, I did not.

Q. You didn't look at whether any of the institutions had facilities sufficient to support their particular mission, did you?

A. No, we did not do an analysis of the relationship of the size of space and type of space and mission and program.

Q. You didn't look at whether or not there was any particular reason related to race for the differences between the character of Mississippi State which is a land grand institution and the character of Alcorn, which is land grant?

A. No.

Q. What's your answer?

A. No.

Q. You didn't look at whether or not the institutions, say, in 1954, the traditionally black institutions, you didn't look at whether or not they were equal or unequal to the traditionally white institutions at that particular time?

A. No, we did not.

[3922] Q. And did you look at whether or not the money that the state has expended at particular institutions is sufficient to bring them, to make them equal in all respects?

A. No.

* * * * *

TESTIMONY OF DR. VICTOR FEISAL

[3925] DR. VICTOR FEISAL, having been first duly sworn, was examined and testified as follows:

* * * * *

Q. Would you state your address for the record, please, sir.

A. Forty one eighty-two Oaks Edge Drive, Memphis, Tennessee ZIP code 38117.

Q. And do you mind stating your age also, Dr. Feisal?

A. Fifty-five.

Q. And what is your present place of employment?

A. Memphis State University.

[3926] Q. And your present job title, please, sir?

A. Vice-president for academic affairs.

Q. Would you relate your educational background, please, sir.

A. I received my Bachelor of Science degree from Memphis State University with a major in biology. I received my Masters Degree from the University of Houston with a major in microbiology, and a minor in biochemistry. I received my PhD from the University of Georgia with the major in microbiology, and a minor in microphysiology.

Q. And when did you receive your Masters, please, sir?

A. In 1959.

Q. Starting at that point in time, would you give a very brief overview of your employment history, please.

A. Yes. I joined Memphis State as an instructor in the department of biology. I served there several years in the teaching faculty. During that period of time I coordinated the area of microbiology, teaching primarily courses in bacteriology and microbiology.

On occasions when we had to fill positions within the department, if it was in my area of specialty, I either served as chairman of the committee or as a member of the search committee. I continued in that position until I was appointed in the dean's office in the college of arts and sciences as an associate dean.

Q. If you would just walk us through briefly with the job [3927] title, Dr. Feisal, we'll come back to your responsibilities.

A. Okay. Subsequent to the faculty position in the department of biology, I was appointed as associate dean

of arts and sciences. I served in that capacity for several years.

Later, I was appointed as acting director of public service and research.

In approximately 1972, I was appointed an associate vice president for academic affairs in the area of administration.

In 1985, I served as vice president for academic affairs.

Q. Is that your present position with the University?

A. That's my present position, yes.

* * * * *

[3940] Q. Are there any particular problems associated with the recruitment of minorities?

A. Yes, there are.

Q. Could you relate several of those, based upon your experience?

A. Fundamental to the problem, to the issue of hiring minorities, the supply. There's still a tremendous shortage of the number of black students being graduated from graduate programs with a terminal degree. Supply is fundamental to the problem. It's really the crux of the problem.

Another issue is because of supply, there is an—it's the same principle of supply and demand, that when the supply is short, the demand is high, then there is extreme competition for the services of minority faculty, and that competition is getting extremely keen within educational institutions, but we're also having to compete with businesses and industries for their services. So the short supply and the keen competition is a difficult factor.

Other factors that I think are instrumental in this [3941] problem is the consideration of the geographical location. Another problem is community. Another problem is opportunities for spouse employment.

Some of these are, again, related to all faculty candidates for possible, but I think in the recruitment of minorities, this becomes an increasing problem. I think minorities are becoming more aware that their services are being requested by institutions within our society, and for that reason, again, I say the competition is extremely keen.

Housing is a factor that influences that decision, and I think that's extremely important to a black faculty member.

Q. Are there any financial aspects that come into play as a result of keen competition to which you have referred?

A. Yes.

Q. What would they be?

A. I think in the Southeast, in general, I think we are not in a competitive position to attract minority faculty. That's a general statement. In particular, I think the State of Mississippi has even a greater problem in attracting minorities to the state because of financial conditions. First, salaries are not competitive in this state. Secondly, I think it's common knowledge if one reads the "Chronicle of Higher Education"—and, as I say, [3942] I think this is the *Wall Street Journal* to education as the *Wall Street Journal* is to business. It's common knowledge that the State of Mississippi has had difficulty in funding higher education. So I think those are constraints that the State of Mississippi must deal with.

I made reference to geography. I still say that I think it is difficult for any institution in the Southeast to compete for the services of blacks who are attending universities in the North, Northeast. It's a matter of convincing them that we have something to offer; it's a matter of convincing them that there are opportunities; it's a matter of convincing them that the Southeast is solvent financially. It's a

convincing effort that needs to take place.

We all have that problem. We've experienced it at Memphis State. I think every state in the Southeast experiences this problem. There's a perception—and I think if you compare salaries of the Southeast with other regions you'll find that we do not compare favorably.

Mississippi, I think, has a unique problem in terms of where the institutions are located. Certainly respected institutions, but the community in which they are located I think is a factor that is often considered.

Q. Dr. Feisal, are there differences in availability of faculty by discipline?

[3943] A. Yes, there is.

Q. Could you elaborate, please, sir, with respect to that, and possibly include the identification and availability by discipline?

A. Yes, I think I have some notes here. First, let me say that there is a shortage—if you look at the national figures of representation in predominantly white institutions you will see there's a shortage of minorities in every state. There are disciplines that have a far greater shortage of minorities than others, even those in which there are a large number of graduates, it's still a very short supply.

As an example, in art the number of PhD's in the field of art from 1977 to 1982 was one thousand three hundred and twenty-four. Within that number, there were nine black males, six black females, respectively point six eight percent and point four five percent.

Another discipline, chemical engineering, same period of time, one thousand sixty-seven. Blacks, six black males for point five six percent. Zero black females for that same period of time. Electrical engineering, one thousand six hundred and seventy-nine. There are twenty-nine black males for one point seven three percent, and zero black

female. Mechanical engineering, one thousand one hundred and seventy-four. Eight black males, point six eight percent, [3944] and one black male for point zero nine percent. History, which you would think in social sciences there would be more blacks present, in the case of European history, one thousand one hundred and sixty-five, black males, four, for point three four percent. Black females, two for point one seven percent.

Q. What about in disciplines where, in your judgment, blacks are more heavily represented?

A. Education. I think the data will support that there are more black representation graduate schools and graduating from graduate schools in the field of social sciences and in education. Take social work as an example, there are one thousand four hundred and seventy-eight PhD's in the field from 1977 to 1982. There were seventy-four black males for five point zero one percent. For black females, there were ninety-three for six point two nine percent.

In the field of education, the total field of education out of forty thousand fifty-eight, there was one thousand eight hundred and six black males, for a percentage of four point one five one percent. There was a thousand and eight hundred and forty-six black females for a percentage of four point six one percent. So even in those disciplines where there are a large number of graduates, there is still unrepresentation of minorities.

Q. Is that national data which you just recited?

[3945] A. That's national data.

Q. Turning specifically to this litigation, Dr. Feisal, what have your assignment, please, sir?

A. My assignment was to review the system for the purpose of determining faculty composition, to determine whether the procedures and policies were in place for affirmative action programs, and then to determine, as best as possible the specific difficulties that the State of Mississippi has in attracting minorities to faculty positions.

Q. What have you done in fulfillment of your assignment, please, sir? Just a brief overview will suffice.

A. I reviewed the plan of compliance, I reviewed each campus affirmative action program, I've looked at reports of plan of compliance implementation, I've looked at house documents, statistical data, I've visited each of the campuses with regard to their efforts, their affirmative action program, I tried to ascertain through conversations some of the difficulties that there were they were having, I looked at data on minorities from national reports from the American Council on Education, a national research council from the Southern regional education board, I looked at availability data, I looked at personnel documents with regard to positions in each institution, the number of tenured black faculty, I looked at the mission statements, I looked at the by-laws of governors by the Board of [3946] Trustees, I examined salary budget. So I looked at both internal and external documents you mentioned.

Q. Now, Dr. Feisal, based on your examination and your experience, sir, do you have an opinion with respect to the existence and implementation of a procedure in Mississippi designed to attract minority faculty to predominantly white institutions?

A. Yes.

Q. And what is that opinion, please, sir?

A. After review of documents and after talking to individuals on the separate campuses, I've concluded that each has in place an affirmative action program. Within the affirmative action program there are special features that is directed toward the recruitment of minority faculty for the purpose of soliciting their services to their college campuses or university campuses.

Q. Have you reached any conclusion specifically with respect to the adequacy of that procedure?

A. Yes, I have. I believe it is an adequate procedure by comparison to other institutions in which I concluded from my survey over the years, corresponding with other institutions throughout the country, major universities outside the regional Southeast, that the techniques, the ideas, the programs for attracting minorities is very similar to what every other institution is involved in. [3947] There may be some variation, some small wrinkle to it, but the kind of overall efforts are typical to every other institution, that I'm aware of.

Q. Could you identify, please, sir, some of the components of the procedure in Mississippi upon which you rely in formulating and expressing your opinion?

A. Yes. We call them faculty supplements or faculty incentives or faculty concessions and that is to provide additional compensation for minority faculty, to make the salary more competitive with other institution offers.

Secondly, I know there's a program of "grow your own," that is to enhance a stipend or to provide a stipend to a promising black graduate student for the purpose of nurturing that student, hopefully grooming that student for a faculty position.

Funds were expended for the creation of distinguished professorships to bring black distinguished faculty to the campus, either one semester or one year.

In addition to that, travel funds for minorities, travel funds for spouses, faculty development providing sabbatical leaves for minority faculty who have the masters degree but who are in the progress or who wish to work on the terminal degree, that is, the PhD or the doctorate in the particular discipline. All of those are very typical of what every other institution is doing in terms of [3948] encouraging soliciting and support minority faculty.

Q. Did you find evidence in Mississippi of written procedures, Dr. Feisal?

A. Yes.

Q. And would you identify those for the Court, what documentation you found with respect just to procedures?

A. The procedures were imbedded in the affirmative action plan, they were imbedded in the reports for the plan of implementation. The results of their efforts are documented. In many cases, their efforts were fruitful, and in many cases, their efforts were not fruitful.

Q. Do you have an opinion, sir, as to the relative ability of the predominantly white institutions in Mississippi to attract minority faculty as compared with institutions in other states?

A. Yes.

Q. And what is that opinion, please, sir?

A. I think the State of Mississippi – let me preface that by saying it has the affirmative action program procedures comparable with all other institutions in place. The mechanism is there. But I think the State of Mississippi is at a very significant disadvantage for the reasons I've already elaborated.

But let me quickly say that I do not believe that the State of Mississippi is in a competitive position because [3949] of the salary structure. When you look at salaries, the average salary by rank at each institution within this state and compare that to the national averages, they are several thousands of dollars beneath the national averages. It is not in a competitive position.

Secondly, I think that the fact that the supply of black graduates, black holders of the doctorate is declining.

* * * * *

[3950] I think what Mississippi is face with is the fact that the salaries are not competitive, the supply of minorities is declining, the economic condition in this state is questionable, and the location of the institutions. I think all of those things work against the State of Mississippi.

The other thing that I would point out is that if you look at national data, there is a decline in the number of faculty, full-time black faculty, in approximately thirty of the fifty states. This is not regionally, but it is across the country. Blacks are not entering four-year institutions as they once were. There has been a decline since 1977 through 1984 of about four point three percent.

Given the fact that the enrollment is declining in graduate school among blacks about twelve percent, given the factual information, Mr. Stephenson, I don't know that any state, and, particularly, I don't know that Mississippi has any single strategy or there's any magical cure for that problem.

Q. Well, let me ask you specifically, Dr. Feisal, are you aware of any additional minority faculty recruitment procedure which the State of Mississippi could implement which would assure greater minority faculty representation at the predominantly white institutions?

A. I do not. And I base that on the fact that my survey of major universities, corresponding with affirmative action officers, vice presidents, assistants to the president, there's a central theme: one, they're concerned about the paucity of blacks, they are concerned about their unsuccessful attempts, unsuccessful efforts to employ more blacks, they are also concerned about that there is no magical or single strategy. All of that runs through there.

Most indicate that they are looking for innovative and creative techniques, just as you are and just as we are. The fact that the supply is declining is causing a great consternation on the part of all of us about this issue.

Unless there is an increase in the enrollment of graduate students, black graduate students in graduate school, I think the situation for all of us is going to become more difficult, not less difficult.

Q. Okay.

* * * * *

[3953] Q. Own, you mentioned that you had conducted two surveys, I believe?

A. Yes, ma'am.

Q. Is that correct?

A. Uh-huh.

Q. Now, directing your attention to the second survey, when was it conducted?

A. January, February of this year.

Q. Okay?

A. I believe.

Q. Was it conducted in preparation for this litigation?

A. It was conducted both for that and for our own institution. We do this periodically. We either do it by [3954] writing or we do it by visitation.

Q. Uh-huh.

A. I have one faculty member, Dr. Holly Walker, a black, who is in my office half the time who visits campuses and he interviews affirmative action officers. The primary purpose is to recruit graduate students, but he also gets names of prospective black faculty that we might try to solicit to apply for positions. So we do this either in writing or through visitation.

Q. Okay. Now, how many schools were a part of this survey?

A. Approximately thirty to fifty.

* * * * *

[4091] Q. Dr. Feisal, you were examined on cross-examination, I believe with respect to issues of faculty representations in the State of Michigan and perhaps Wisconsin.

Do you have data with you, sir, that reflects the minority percentage of higher education faculty in those states?

A. Yes, I have.

Q. Would you relate that, please?

A. Yes. I think—Yes, I think in the State of Wisconsin, which has one of the largest universities in the country, the University of Wisconsin at Madison, with a very large enrollment and large faculty, but the State of Wisconsin in 1977 had seventy-three blacks in all of [4092] its state faculty. That is one point one percent of the total faculty.

In 1975, or rather—I am sorry, 1984, they had increased in absolute numbers from seventy-three to seventy-five and it remains at one point one percent. That is the—One point one percent of approximately seventy-eight hundred faculty statewide.

University of Michigan, it has a—I believe—I am sorry, Michigan has three point two percent. 1977, it had three hundred and forty-five black faculty statewide.

1984, it has two hundred and sixty-two faculty, and as one of the attorneys said, the University of Michigan has one of the outstanding programs for recruitment of minority faculty, but, in fact, they have lost over that period of time about twenty-four percent black faculty.

California, with its Massey system, University of California, the most outstanding—one of the most outstanding institutions in this country, certainly a prestigious institution—

* * * * *

[4093] A. Yes. Thirty-four black faculty out of six hundred faculty at the University of California. It has one of the highest salary systems in the country. Certainly climate as well. It is cosmopolitan. It is one of the most prestigious schools.

I think the fundamental problem that we are dealing with here is lack of supply. The statistical data from various reliable sources indicate that there is not an in-

crease in the number of black graduates at the doctoral level, but it is declining.

So long as there is a decline, compounded by a cutback in financial aid, we are going to have this problem of lack of supply.

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TESTIMONY OF BELA J. CHAIN

[4118] THE WITNESS: My name is Bela J. Chain, Jr., C H A I N. B E L A.

DIRECT EXAMINATION

MR. GOODMAN:

Q. Where do you live, please, sir?

A. I live in Oxford, Mississippi.

Q. Would you tell us your educational background, please, sir.

A. I have a bachelor's in chemistry, a master's in education administration and a doctorate in educational administration.

Q. Can you give us a quick review of your employment history?

A. I graduated from the University in 1957. I spent two years on active duty. I taught and coached and was high school principal in the public schools of this state for a total of six years. I've been in higher education since then, first as associate registrar at the University [4119] of Mississippi for two years. One year I was assistant professor of education at Delta State. Returned to the University and was registrar for two years. And then since 1973, have held my current position, whcih is director of personnel and associate professor of education administration at the University.

Q. Since 1973?

A. Since 1973, yes, sir.

Q. Okay. Does the University of Mississippi have an affirmative action officer?

A. Yes, sir.

Q. Have you ever served in that capacity?

A. I have served in that capacity.

Q. Would you tell us, Doctor, what period of time, please, sir?

A. That was part of my responsiblities from 1973 forward until I believe 1983 when we hired a full-time affirmative action officer.

Q. Okay.

A. And then since the fall of last year, in 19- —about August of 1986, I have been serving in an active capacity while we're searching for a replacement for her.

Q. In an acting capacity?

A. Yes, sir.

Q. Who was the University's affirmative action officer between 1983 and 1986?

A. It was a lady by the name of Dr. Erie Jean Bowen.

Q. Fr the record what was her race?

[4120] A. She was black.

Q. You are now the acting affirmative action officer. Tell the Court whether or not any steps have been actually taken toward finding a permanent replacement.

A. Yes, sir, we are actively seeking a replacement. We had a search during the fall and the early part of this year. We decided, after looking at the results of that, to reopen the search and we are in the final stages of the second part of that search at this point.

Q. What do you mean by the final stages?

Q. We feel like we have two candidates—the committee recommended two candidates to the Chancellor and he's evaluating those two and I think negotiating with them to determine which one would be best to fulfill our needs.

Q. And can you tell us for the record, please, sir, the race or races of those two candidates for the position?

A. Both of those candidates are black.

Q. What are the duties and responsibilities of the affirmative action officer at the University?

A. Well, basically, they are to maintain currency in all of the rules and regulations and policies that deal with affirmative action. There is, of course, a recordkeeping requirement involved and a reporting requirement involved with that. I guess the more pronounced responsibility has to do with encouraging and seeing to it that the University understands the obligations that we have in affirmative action and to provide a stimulus to encouraging the University to fulfill its [4121] obligation in that regard.

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[4122] Q. Just tell us why your responsibilities as director of personnel differ with respect to faculty employment as contracted with support staff employment.

A. Well, as the Court may know, faculty are mostly responsible for their own hiring. The autonomy to hire is at the lowest level, and department chairs have the basic responsibility to recommend in that arena, but the faculties of each department are used and groups of them as search committees, if not the whole departmental faculty. So that—the autonomy there is at the lowest level.

Q. Dr. Chain, what has been your responsibility, if any, with respect to the Board of Trustees plan of compliance adopted in 1974?

A. Well, I have had some responsibility in that. I initially assisted in the development of our support document to that plan, and annually since then—I believe annually—I've been involved in our report to the Board of Trustees of the Institutions of Higher Learning.

Q. And when you say involved, tell us a little bit more about that. How have you been involved?

A. Okay, sir. When I was the affirmative action officer – Well, I'll have to correct that just a minute. Initially we had an individual who was an administrator of our office for civil rights and affirmative action compliance. That individual was Dr. John Fay, and I was his assistant at that time. And for the first three or four years until Dr. Fay retired – and I believe his retirement was 1976-77. But during those years, I assisted him in compliling the report. After then, until Dr. Bowen came aboard with us, I was the primary editor, I guess [4123] you could say, of the report. During Dr. Bowen's term I worked with her and assisted her with it, but she was the primary person that was responsible for getting the report together.

Q. Now, as editor or even as assistant editor, tell the Court a little bit about how you went about compiling the information that went into the report.

A. Well, initially, in the initial report – and each year we did two. We got – we received a request from the Board of Trustees office and that request asked for – in the different categories that's under the plan of compliance, asked what we had done during the past year. And we – each year, we got that, we would disseminate those requests for data and for information and for what the University had done to the key individuals in each area that was responsible for this, and generally to the campus as a whole to see what each department had done.

And we received feedback from those department that went through the administrative chain and it would go through the dean's office, vice chancellor's office and so forth and then it would be collected in our office and we would put it together, edited it as far as we could in making it sound like one document rather than several that

had been submitted by several different persons. So that is generally the procedure that is used each year.

Q. Do you have before you a copy of what's been marked Board 094 which is a report to the Board of Trustees by the University of Mississippi relating to the plan of compliance with a date on it of May 28, 1974?

A. I do have that document, yes, sir.

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[4125] Q. Turning back in that document to the contents pages, please, sir, at the beginning, the table of contents. Can you tell us whether or not the format of this initial report, how it compares to the format of the reports which followed it or succeeded it?

A. It's my recollection that they are basically the same each year. I think that as I mentioned earlier, we did get a memorandum from the Board of Trustees asking for input in each of one of these areas. And I haven't made a detailed comparison, but it's my recollectin that they are, if not the same, they are very similar.

Q. And this initial report addressed what principal areas?

A. Okay. If I may use the table of contents here, we had a brief introduction and that reiterated our responsibilities under the plan of compliance. There is a section in the report on admissions recruitment, retention and graduation. There is a section on counseling minority students. There is a section of non-discrimination practices. There is a section on other race employment training and promotion. And then a section on cooperative programs and a section on strengthening existing programs to attract other race individuals.

Q. Now, do you have before you a document which has been marked Board 105 which purports to be the twelfth report from the University of Mississippi to the

Board of Trustees in connection with the plan of compliance?

A. Yes, sir, I have that report.

[4126] Q. Can you tell us whether or not the twelfth report identified as Board 105 is the most recent?

A. Yes, sir, it is.

Q. Referring you, please, sir, to the first page of the most recent report, Board 105.

A. Okay, sir.

Q. Is the question of black student enrollment addressed?

A. Yes, sir.

Q. And what was the black enrollment at the University of Mississippi as of the fall of 1985?

A. Okay, sir, according to this information here the enrollment was five hundred and forty-seven in the fall of—right, fall of 1985. Excuse me.

Q. Fall of 1985?

A. Yes, sir.

Q. What was the new freshman black enrollment at that time?

A. We had—the new freshman enrollment at the time states here that it was up forty-five point eight percent or twenty-seven students. I'd have to look here and see what the total—I believe it's five hundred and forty-seven total.

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Q. Referring you now, please, sir, to page four of the report which, [4127] again, is Board 105. Does the reports specifically address recruitment?

A. Yes, sir.

Q. Can you tell the Court what the minority recruitment conference is which is referred to on page six?

A. Let me look there just a minute. The minority recruitment conference—we have two of those and I want to

make sure – We have a leadership conference that we have for undergraduate or potential freshmen. The minority recruitment conference is one we have with the law school in which minority pre-law students are invited to the campus and are given an opportunity to see what that profession would be about and what financial aids might be available, the possibility of assistance to them in academic tutorial assistance. And I notice in the fall of nineteen eighty-five we had approximately one hundred students.

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Q. When did that conference originate, if you recall?

A. It's been on-going a number of years. I can't say for sure when it originated.

Q. Turn to page seven briefly, please, sir. Does the report address graduation rates for minority students?

A. Yes, sir. We include the graduation rates each year. We feel like that this is important, not only in admissions of minority students but the graduate rate.

And we are rather proud of our persistent rate of minority students. [4128] We did a study in 1980, I believe it was, that showed that the persistence of our minority students was better if they came as freshmen than the white students. And for transfer it was not that much less. So the persistent rate we've been real proud of, sir.

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[4129] Q. Beginning at page fifteen, does the report address the subject of student teaching in the minority context?

A Yes, sir, it does.

Q Does the report address at page eighteen financial assistance for students in the minority context?

Q. Yes, sir.

[4130] Q. Okay. Page nineteen, does the report address student employment in the minority context?

A. Yes, sir, it does.

Q. And at pages twenty-one and twenty-two, does the report address extra-curricular activities in the minority context?

A. Yes, sir, it does.

Q. At page twenty-four, Dr. Chain, is the subject of faculty employment addressed?

A. Yes, sir.

Q. For example, on page twenty-four is the minority faculty shown?

A. The number is—The total number?

Q. Uh-huh.

A. Yes, sir.

Q. And what is the number?

A. The number is twenty-two total minority faculty for 1985.

Q. Of that twenty-two, how many are black?

A. Eleven black faculty, sir.

Q. At page twenty-five, is the subject of minority faculty housing addressed?

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Q. I was referring you to the top of page twenty-five.

A. Twenty-five. Okay. Excuse me. Yes. We do have on-campus housing, [4131] as most of you may now, and minority faculty that are recruited to the University are given priority in that housing as part of the recruitment package.

Q. Are given priority?

A. Yes, sir.

Q. At page twenty-six does the report address distinguished black lectureships?

A. Yes, sir, it does.

Q. Can you tell us a little bit about that?

A. Well, we have a committee at the University, a Minority Faculty Recruitment Committee that has access to some budgeted funds and this committee is using and has used some of those funds to bring in distinguished black lectureships to the campus, and this could be for a week's lecture or for a day's presentation or could be for a longer period of time. In fact, in some cases, it has been for a semester, but we would bring a person in under this program for a semester. So it's varying lengths of time, but to bring minority faculty to the campus.

Q. What's the difference between that, Dr. Chain, and distinguished professorships addressed at page thirty-one of the report?

A. I guess the best way to say it would be in a matter of degree, and there is some overlap. Usually the distinguished professorship program is more a longer term. The design there is to be there for a year, and in some cases and with the expectation that that title and that year's program with us would attract those folks to us permanently.

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[4132] Q. At page thirty-nine and forty of the report, Dr. Chain, is the matter of the plan of compliance funding addressed?

A. Yes, sir, it is.

Q. And does the report reflect age page forty the expenditures in this connection at the University through the period of the first twelve reports to the Board of Trustees?

A. Yes, sir, we have a total figure there of six million one hundred and fifty-seven thousand seven hundred and nine dollars that we have determined to be spent and can be allocated to the affirmative action plan of compliance. It's difficult to make that exact. There are probably some other resources that have gone into it, but those are the ones that we could readily identify.

Q. You could readily identify?
A. Yes, sir.

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[4165] **TESTIMONY OF DR. KENNETH WOOTEN**

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DIRECT EXAMINATION

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Q. Where do you live, please sir?
A. Here in Oxford.
Q. By whom are you employed?
A. University of Mississippi.
Q. In what capacity?
A. I am Registrar and Dean of Admissions.
Q. And how long have you held that position, please, sir?
A. Since about 1970.
Q. As Registrar and Dean of Admissions at the University of Mississippi, have you investigated the number of black freshmen applicants who completed the admission process and who were denied admission to the University for the fall semester of 1986?
A. I have.
[4166] Q. And what is that number, please, sir?
A. Nine.
Q. Nine?
A. Nine.

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[4187] **TESTIMONY OF DR. BERNARD SISKIN**

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DIRECT EXAMINATION

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[4188] Q. Would you state your address for the record, please, sir?

A. 1608 Walnut Street, Philadelphia, Pennsylvania.

Q. And what is your occupation, sir?

A. I am a professional statistician and laborer analyst.

Q. By whom are you employed?

A. National Economic Research Associates, Incorporated.

Q. And what is your job title with that organization?

A. I am Vice-President and Manager of the Philadelphia office.

Q. And would you relate your educational background, please, sir, for the Court?

A. Sure. In 1965, I received a bachelor's degree in mathematics with a minor in economics from the University of Pittsburgh.

I did a year of graduate study in economics and statistics at the University of North Carolina at Chapel Hill.

In 1970, I received a PhD in statistics from the Warden School at the University of Pennsylvania.

Q. And would you provide a brief overview of your employment background?

A. 1968, when I finished my course work, I joined the faculty at Temple University as an instructor.

1970, upon completion of my course work, I became assistant professor at Temple University.

In 1973, I became Chairman of the Department of Statistics, served as Chairman for five years.

In 1984, I resigned a tenured associate professorship from [4189] Temple University to devote fulltime to consulting and joined the firm which was a predecessor to National Economic Research Associates, Inc.

Q. For the record, would you identify Temple University please, sir?

A. Temple University is a large metropolitan university located in Philadelphia. It is a comprehensive doctoral granting research institution, offering PhD's in almost all areas, as well as most professional areas, law, medicine, pharmacy, et cetera.

Q. Very briefly, what were your job duties while at Temple?

A. Well, my duties were primarily to teach statistics courses, to both graduates and undergraduates, to serve in various capacities as a normal faculty member would, Tenure Committees, Promotions Committees, various university committees, as well as a period where I had administrative responsibilities as Chairman of the Department of Statistics.

I also served for a year as Director of the Research Group or Laboratory in the Business School.

Q. As Chairman of the Department of Statistics at Temple, did you ever address the issue of program duplication?

A. Yes. There was an issue raised of the issue of program duplication, course duplication of statistic courses offered throughout the university.

Statistics courses were offered by the Math Department, Statistics Department, Medical School, Social Departments, Psychology Department, et cetera.

[4190] The President deaned a committee, who I was a member of, consisting of a Chairman and administrators, to study the issue of duplication of courses and programs in the area of statistics within Temple University.

Q. And how was that study conducted?

A. We as a committee met. We reviewed the courses being offered, the textbooks being used, the students being taught, the course outlines for each of the courses, we reviewed all of the programs being offered, what they consisted of in terms of course, mission, student body, and

after almost a year of meetings, we made our recommendations to the President.

* * * * *

Q. All right. What are your job duties and responsibilities with the organization?

A. My duties consist of two major responsibilities. One is as a researcher. I am responsible for doing statistical and economic research consulting, and as Director of the Philadelphia office, I am also charged with administrative duties in managing the Philadelphia [4191] office.

Q. All right. Dr. Siskin, what is applied statistics?

A. Applied statistics is the application of statistical theory and techniques to any one of a variety of areas to solve problems and be able to determine what is an appropriate influence that can be drawn from the data in that discipline.

* * * * *

[4192] Q. All right. You have mentioned the United States Department of Agriculture.

Have you served as the statistical consultant to any other governmental agencies?

A. Yes, I have.

Q. Could you identify some of those, please, sir?

A. I am currently and for a long time had an ongoing consulting relationship with the United States Department of Justice, having worked for—currently working for the Civil Rights Division, the United States Attorney's Office, the Indian Affairs Office, and the Credit Division within the Justice Department.

I have also worked for the Legal Law Enforcement Assistants Administration when it was in existence as a consultant.

I have worked for the Department of Labor as a consultant, and I have mentioned the Department of Agriculture.

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[4193] Q. Could you identify some of the entities or groups before whom you have appeared?

A. I have lectured at professional statistical association meetings to the American Statistical Association group on the various uses of statistics in a legal setting. I have also been invited and spoken quite often to various American Bar Associations or groups.

I have been on faculty and talked to practicing lawyers. I have been invited to speak at the Federal Bar Association. Various law schools, as well as the National Conference for Aging and the National Conference of Women Lawyers.

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Q. Well, have you written any books?

A. I have written three textbooks and a chapter in an encyclopedia of the use of statistics in management.

MR. STEPHENSON: Your Honor, we tender Dr. Siskin as an expert in the area of applied statistics.

THE COURT: Do you wish to voir dire on qualifications, Counsel?

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[4194] MR. STEPHENSON: No, sir, not at all. His program duplication analysis is a statistical analysis. That is what he is here to testify to, his use of statistical information and the appropriate conclusions and information that can be drawn therefrom.

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[4195] MR. STEPHENSON: With respect to the program area, yes, I am offering him specifically, Your

Honor, with respect to his designation of expertise in the area of applied statistics. Now, as he has indicated, that covers a broad range of subject matters.

With respect to the program issues, he has analyzed the statistical validity of the approaches and methodologies utilized by Dr. Conrad in this proceeding, and he is prepared to testify with respect to the statistical validity of those approaches.

THE COURT: All right. He will be accepted as to those approaches.

* * * * *

[4197] Q. Dr. Siskin, based on your analyses, do you have an opinion with respect to the statistical validity of Dr. Conrad's program duplication analysis?

A. Yes, I do.

Q. And what is that opinion, please, sir?

A. The first opinion I have is that the concept, as a statistical measure of a dual curricular system as presented by Dr. Conrad is [4198] meaningless because there is no unitary system.

Every school duplicates to some extent what is offered in another school. So any comparison between one and seven schools or two and any six schools will be under his definition a dual curricular system. Therefore, there are a hundred and sixty-two dual curricular systems in the State of Mississippi in the public university system.

To have any meaning, one needs to have norms or standards by which to judge the amount of duplication or to determine whether or not there is any sort of pattern or not present.

The second opinion I would have is with respect to duplication, and with respect to patterns, there clearly is no pattern of duplication associated or based on racial identification of the institutions. There is no more dupli-

cation when looked on comparing the predominantly black institutions to the predominantly white institutions than one would expect to find looking at any three institutions and comparing to any five institutions irregardless of their racial identification.

* * * * *

[4199] So, clearly, what the data shows in terms of patterns is that there is no relationship or pattern of increasing or large duplication related to racial identification of the universities. There is clearly a pattern associated with whether it is a comprehensive university or non-comprehensive university.

Among the non-comprehensive universities, which the black universities are all non-comprehensive, the least amount of duplication exists among the three black non-comprehensive universities as among any other set of non-comprehensive universities.

* * * * *

[4206] A. Sir, do you have an opinion with respect to the statistical validity of Dr. Conrad's program quality analysis?

A. Yes, I do.

Q. What is that opinion, please, sir?

A. The opinion is that I agree with the numbers, since it is true if you compare the average of the predominantly three black schools and five predominantly white schools, you will find the black schools lower, but I would point out and I think the appropriate conclusion is [4207] that it had nothing to do with the racial identification of the schools. The differences are not associated with race at all, but are simply inherent in the differences between comprehensive universities and non-comprehensive universities.

Now, it is confounded, the racial identification of the school with whether it is a comprehensive or non-comprehensive university.

What you find is that comprehensive universities, of course, in terms of programs, library, faculty with PhD's and so forth, all have considerable greater numbers on average than the non-comprehensive universities.

If one looks at the averages controlling for whether it is a comprehensive university or non-comprehensive university, one finds no pattern with respect to race.

The black non-comprehensive universities look very much like any non-comprehensive university. The white ones or black ones.

* * * * *

[4213] Q. And do you have an opinion, sir, with respect to the statistical validity of Dr. Conrad's analysis of the change in number of programs from 1981 to 1986?

A. Okay. Here I think you do see a pattern somewhat associated with race between 1981 and 1986. The number of programs at all levels at all institutions declined, generally.

Generally, there was a reduction in programs. If you look [4214] at the data, what you will find the largest reduction occurred among the comprehensive universities.

Okay. Less of a reduction occurred among the non-comprehensive universities. At the bachelor's and master's levels in terms of programs, either the least or next to least amount of reduction occurred at the predominantly black institutions. So, among all of the schools—among the non-comprehensive schools, there was a pattern that the reduction of programs was the least among the predominantly black schools than among the predominantly white schools. This is illustrated in Board Exhibit 240 and 243.

* * * * *

[4215] Q. Thank you, sir. Now, if we could, please, sir, focus on your examination of student enrollment.

Now, at the predominantly white institutions in the context of a qualified pool, would you relate, please, sir, the approach that you took and the efforts that you expended in this analysis.

A. Well, what I wanted to do was compare the enrollment at each of the schools with the pool, qualified pool from which the students potentially could be drawn.

To do this, I had to define two items, obviously. The first one was what was the racial mix of the enrollment in the student body.

* * * * *

[4216] The other picture was the qualified pool from which you can draw it from. To get the qualified pool, the first step was to get information on students, potential students and the students who would meet the standards or exceptions standard set by the university.

To do this, I obtained from the American College Testing Bureau their ACT tapes for 1984, 1985, 1986. What they sent me was a tape that contained everybody in the State of Mississippi who took the ACT's, everybody outside of the State of Mississippi who requested that their scores be sent to a Mississippi university.

The information contained was the social security number of the individual named, the ACT scores they obtained, their credits that they had meeting various standards.

Two other fields that I used was the field that said, what is your highest high school educational attainment plans. There were two year college, four year degree, so on and others that I said, I want to become a doctor, PhD or whatever.

[4217] There was also a field which indicated when they planned to attend college.

A third field which I used was the—They are asked to give preferences as to what schools they would like their ACT's to be sent to. Preferences to where they would like to go to school and where they would like their ACT sent. I was given information for those schools. If one of their or any of their preferences were any of the eight public universities in Mississippi, they were placed on the tape, so that I knew who preferred and in which order in the eight schools, if they preferred any.

From this data, I did the following to create my qualified pools:

The first thing I did was merge all of the tapes together and got rid of the duplicative people. A lot of people take it in their junior year and again in their senior year. So, I dealt with a single record for each individual, coded to the time they expected to enter college. Everybody that planned to enter in 1985, the fall of 1985.

If the person took the test in the previous year as a junior and not a senior, I would use that record. If he took it both as a junior and senior, I would then use that record that—I would take the highest ACT test score, whatever the highest was, which is the standard used by most universities. That gave me my base data to start with.

Then I eliminated from the pool those that said their highest [4218] goal was a two-year college, because I was only dealing with people who said I want to attend a four-year college or planned to complete a four-year college. Now, that does not mean that somebody is not going to go to a junior college first.

* * * * *

I then broke that pool up into two groups. One group was those people who had a 15 ACT composite score or

better and met the minimum graduate requirements in 1986, with all of the exceptions that allowed under the rules for that.

Okay. That was one set of qualified pools, which is people if they applied automatically would have been accepted.

Then everybody else who scores between a 9 and above on the ACT composite was placed in another pool, which was they could be accepted under the exception rule. That allowed me then to define a qualified pool, which is a weighted average, which meant five percent or fifty students of the previous freshmen class or whichever was larger were assumed to come from the exception pool, and the remaining ninety-five percent of the class was assumed to come from the qualified pool that met the minimum standards.

From that, I then under the assumption that within this pool, blacks and whites in each of the pools, are equally likely to go any of [4219] the schools and equally likely to apply and show up, what would I have expected, therefore, the racial mix of the student body to be.

I compared that with the racial mix of what the freshmen class actually was.

Q. All right. Dr. Siskin, based on your examination, do you have an opinion, sir, with respect to the actual representation of blacks at the predominantly white institutions in comparison to their statistical representation in the qualified pool?

A. Yes, I do.

Q. And what is that opinion, please, sir?

A. With respect to Delta State University, Mississippi State University, Mississippi University for Women, and the University of Southern Mississippi, I find that the representation of the freshmen class is statistically in parity with the representation in the qualified pools, and the

inclusion indications would be within these qualified pools blacks and whites were equally likely to apply, get accepted and wind up at these universities. That is true for basically 1985 and 1986.

With respect to the University of Mississippi, I would conclude that there is something in the process in blacks in the qualified pool being less likely to attend and showing up at the University of Mississippi than whites in the qualified pool.

* * * * *

[4224] Q. Dr. Siskin, have you made any other analysis with respect to [4225] student enrollment in the context of a qualified pool?

A. Yes, I did.

Q. What did you do, please, sir?

A. Well, I did a study which looked at the interaction between student preference, where they wind up and their ACT scores.

* * * * *

A. When somebody takes the ACT test, they indicate and—are given a choice of indicating preferences for universities for which they would like to attend and for which the ACT scores are supposed to be sent to.

* * * * *

[4226] I have tabbed up everybody whose first preference was for a white; one of the predominantly white institutions. So, when I say first preference for predominantly white institution, given their preference, and maybe it is their second or third, again, they have a preference for a state institution in the State of Mississippi. Their first preference among the State institutions was for a predominantly white institution. That is identified on the statement of whose preferences were predominantly a white school.

* * * * *

When I did the qualified pool in the previous studies, of course, they were all considered. No, everybody in the State. What I was testing was the assumption was there any difference in black and [4227] white interests given there in the qualified pool for any of the predominantly white institutions.

This study, I am focusing now on what they actually asked for, what they actually had a preference for, and now I am defining who in that group, of course, indicated a preference for a predominantly white institution in the State of Mississippi, and that preference would be their first preference in terms of a State institution.

* * * * *

Q. When, sir, was the preference indicated by the student?

A. Preference is indicated by the student when he signs up to take the ACT test. It is before he takes the test. It is on the form he fills out is my understanding.

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[4228] A. Okay. So, on one side I took the ACT tapes and identified those people. As I said, who had a preference for a predominantly white school and sorted those off who had ACT composite scores of 14 or less.

Okay. Then I matched those with another data set that I was given, which was a list that the school supplied me with, which was their student body in 1986, identified by social security number and identified by race.

So what I determined was, given you explain the preference for the white school on the ACT, I then looked to see where did he wind up.

Did he wind up in a predominantly white school or predominantly black school or did you wind up in none of

them. Okay.

So, I wanted to see what happened to these people who expressed the preference, where did he wind up, what happened, where did he go.

What table 194 represents is the results of what happened to these people, where they actually wound up in the system.

Q. And what conclusion do you draw, sir, based upon Board 194?

A. Well, the conclusions that I draw are that, first, the predominantly black institutions are not—Not really affected in the sense of becoming black because blacks who wanted to go to white schools, who scored below 14, wind up at the black schools. There are a total of only ninety-three blacks that wind up at predominantly black schools who asked to go to a white—Who indicated a preference for a white school when they were taking the ACT's. [4229] Okay. But eventually, wound up scoring below 15 and wound up at a black school. They may or may not have applied to white schools. I don't know, but clearly that is the maximum number of people that are shifted, okay. It is clearly minimal.

So, in essence, the predominantly black schools are not black because blacks wanted to go to the white schools are being shifted to the black schools because of their ACT scores.

Q. Did you reach any other conclusions, sir, with respect to this table?

A. The second conclusion you reach is if you look at the 13 and 14's, the scores of those people who were black and wanted to go to a predominantly white school, fifty-one out of the eighty-six actually wound up in a white school, so you are more likely to actually wind up at a white school than they would at a predominantly black school.

Q. Where did you get that number, fifty-one, sir?

A. If you look at the—Given they are going to be in the system, I should say. If you look at the table, you will find that there are two hundred and nine people, blacks, who scored a 13 or 15. That is just adding up the numbers under 13 and 14. There are two hundred and nine blacks who scored a 13 or 14 who had on the ACT indicated a preference for white institutions. Of those, thirty-five wound up at a predominantly black institution, fifty-one wind up at a predominantly white institution. And a hundred and fifty-eight wind up other universities, not going to school or Temple for all I know. I don't know what happens to them. They do not wind up in the Mississippi [4230] public universities system.

So given you are going to wind up in the Mississippi public school system and you scored a 13 or 14 on your ACT's, the blacks are more likely to wind up in a white school than in a black school.

Secondly, when you look at this, you will see there is a substantial number of whites as well that indicated a preference for a white school that score 13 or 14 and do not wind up at a white school. They do not wind up in the system essentially. They wind up four hundred and forty-five of the five hundred and twenty-one wind up outside of the system, either junior college or another university or whatever.

* * * * *

A. The net result of this is given simply everybody that got a 13 or 14 who stated a preference for a white school went to a white school was automatically accepted and did want to go and did show up, the [4231] impact on the white schools would be triple. The percent of black in the white schools would go up by roughly one percentage point. Actually, from twelve point eight to thirteen point

one, which is not a significant change in the representation of the universities.

* * * * *

Q. Looking further at this question of preference, Dr. Siskin, did you look at the degree to which students scoring below 15 on the ACT failed to request that their scores be sent to public four-year institutions in Mississippi?

A. Yes, I did.

Q. What did you find?

A. Well, of the people who scored—both black and whites who scored below a 15, approximately half never asked their scores to be sent to any of the eight public universities in the State of Mississippi.

Q. Continuing, Dr. Siskin, did you prepare any additional [4232] tables addressing the issue of preference of blacks in predominantly white institutions?

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This shows you where they wound up, which of the schools and what their score was. It also shows that there were eighty-nine blacks when they took the test indicated a preference for a white school was their first choice. They scored above a 14 on their ACT's, subsequently met the standards, and if applied would have been accepted, but actually wound up at predominantly black schools by choice.

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[4233] Q. Dr. Siskin, let's focus, now, please, sir, on your faculty [4234] analysis.

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[4236] A. When you do a snapshot, it is who is there at a given point in time to what the available labor pool is. The available qualified labor pool would be.

When you do a snapshot, you measure a lot of things. You measure hiring and you also measure termination and you measure hiring over a whole period of time.

You are looking at who ultimately is still employed, which is the result of hiring, who leaves, who gets tenure and the whole process. It represents decision tracking from the 1950's all the way through to the current time.

Q. Now, would you turn, please, sir, with respect to the hire study, and define for the Court what you mean by that term?

A. I posed a snapshot of simply the hires. I asked the schools to identify for me who they hired in each of the departments. Now, from 1974 forward. So, I looked at actual hires. With the exception of one school—wait a minute. The University of Southern Mississippi could only supply me back to 1977. I got the hires by department from each of the schools.

Comparing that to the labor force, assuming the same educational premises, the existing faculty, I obtained a comparison of the hiring and what would one expect in terms of the qualified available pool, so I have two studies.

One that focuses on the hiring decisions and one that looks at a snapshot in 1985 and 1986.

[4237] Q. Now, based on these analyses, Dr. Siskin, do you have an opinion with respect to the actual representation of blacks at the predominantly white institutions as contrasted with their statistical representation in the qualified faculty pool?

A. Yes.

Q. What is that opinion, please, sir?

A. With respect hiring, from 1974 through 1986, in certain cases 1987 data, the percent blacks hired statistically significantly exceeds the black representation in the qualified labor pool.

We conclude, therefore, that there is some affirmative action in the hiring process associated with being black.

There were some fifty-three more black hires than one would have expected given the representation of qualified labor pool. That is highly statistically significant. That pattern holds at each of the five schools.

THE COURT: What are the years of that?

MR. STEPHENSON: That is 1974, Your Honor, through 1986, with one exception. I believe he included 1987 data for Mississippi State University and University of Mississippi and for the University of Southern Mississippi, it only commences with 1977.

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Q. Did you reach any other opinions?

A. Yes. The second conclusion that the data shows us is that the turnover rate for blacks is higher than for whites. Blacks are less likely to remain employed when you look at the snapshot. There was a [4238] higher turnover rate.

As a result, if you look at a snapshot of the faculty currently, if you look at those persons hired since 1974, you will find overall that they are in line with the relative labor market, not in excess, but almost perfectly in line with the relative labor pool.

If you look over the total faculty, since forty percent of the faculty—current faculty snapshot consists of the persons that have been onboard prior to 1974—prior to 1974, the data indicates it was a—The black representations is lower than that in the qualified labor pool.

The result is in aggregate, there still is lower representation of qualified labor pool totally due to the faculty remaining from 1974. At—that, however, is only true at—patterns clear at two of the schools, the hiring since 1974 and the turnover of older faculty has since eliminated that discrepancy.

Q. Did you prepare any tables, sir, that reflect the bases of these opinions?

A. Yes, I did. Tables 440 summarizes the hiring results. 214 through 217 to 431 give the individual school results on hiring.

Q. Did you say 430?

A. That is the—430 is summary of faculty status during this period. Total number of hires, person into faculty rank, three thousand four hundred and fifty-seven.

Of those, one hundred and ninety-three were identified as black by the university disc. This gives us five point five percent black hiring rate.

[4239] Okay. Looking at the discipline they are hired into, the typical degree for that discipline, the availability nationally for persons with that level of education in those disciplines, if they selected randomly from that labor market, you have have expected a hundred and thirty-nine point nine people to be black or a hundred and forty to be black.

As a result, there were fifty-three more blacks hired than one would have expected given the representation of the qualified labor pool in this country, given qualified labor pool as being defined as the appropriate discipline with the appropriate level of educational attainment. That difference of fifty-three people represents a difference from what you would expect of four point five seven standard deviation. It is in parentheses meaning over, rather than a short fall. There are fifty-three additional blacks hired than one would have expected and that difference represents four point five seven deviations in the affirmative sense. That would meet any standard from a statistician's viewpoint to conclude that clearly there was something in the selection process with respect to race given their availability in the pool.

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[4240] Q. Could you comment, please, sir, with respect to 431 on the statistical significance here of the standard deviation?

A. Yes, sir. Well, the data shows for the University of Mississippi, there were sixty-one black hires, given their discipline of hires in normal degrees, one would have expected thirty-nine blacks to have been hired. There are twenty-two more than one would have expected given the labor force. The qualified labor force. That would be a statistical significance overage, the University of Mississippi.

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[4248] Q. Okay. Would you tell us the opinion you expressed at that time and whether that is still your opinion today?

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A. Well, what I said I – it is my opinion, I believe, that in various circumstances one can trace the historically or predominantly black institutions and can generally trace it back to a variety of factors, historical factors, which from legacy, from segregation or whatever.

Q. And this, oftentimes, can have a current effect today?

A. I have trouble when you say current effect today. I mean if you trace the history of any institution to where an institution is today, is a function of its history, so there's always an historical effect and trend in history, whether it be Temple University or Mississippi State or Alcorn State.

* * * * *

[4275] Q. Okay. Now, Doctor, if you would pay particular attention to the 1986 data for Mississippi State University, could you give us the number of standard deviations there?

A. Mississippi State?

Q. Yes, sir.

A. 1986. Three point two four.

Q. Again, significant; is that correct?

A. That's correct.

Q. Significantly low in terms of actual blacks as opposed to the estimated, even assuming your pool; is that correct?

A. Just Mississippi State, that's correct.

* * * * *

[4287] Q. Did you do any study of black schools in the state, the black universities?

A. No, I did not study the black universities.

Q. Did you look at their faculty at all?

A. No.

Q. Would it surprise you to find that they are able to find quite a few black faculty members?

A. It wouldn't surprise me. I haven't studied it so I couldn't tell you what it means.

[4288] Q. Assume a hypothetical for instance, Doctor, assume that hypothetically you have five schools where you have, oh, let's say, about a hundred teachers in each, and out of those teachers one was black, ninety-nine were white.

Assume further, you have another three schools and you've got fifty teachers and assume forty-nine are black and one is white in each instance. Is this another one of these examples where you don't have to do any calculations, you can just say that didn't happen by chance?

A. What do you mean by—what didn't happen by chance? If the pool, for instance, in this country is generally around two or three percent PhD's and it goes down depending on the discipline and us in some disciplines, any time you have a faculty which is fifty or sixty

percent black, I'll tell you it's something related to race in your selection process, which is not picking from that pool in a random process.

Q. Assume the numbers I gave you to be the totality of the pool, Doctor.

A. Totality of the pool?

Q. Yes, sir.

A. That makes no sense. Predominantly white schools don't recruit only from existing universities in the State of Mississippi. That makes no sense.

Q. Sir, I asked you to assume that's the totality of the pool.

A. Okay. Then one has predominantly black faculty and one has predominantly white faculty.

Q. Could that distribution have happened by chance?

A. No.

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[4307] Q. When you compared—this relates to your analysis of the racial makeup of the historically white institutions. When you—you compared the actual enrollment to the estimated enrollment and when you discussed that in your deposition a couple of times, you used the—you said you were looking to see if blacks and whites were equally comfortable in choosing a school. Do you recall using the word comfortable?

A. I don't remember using it, but that's—since essentially there are not—the pool fifteen and above is a non-competitive pool, you apply and you're accepted. It represents who applies. It's not really screening the system, so it would be—it's the students' choice of going there, rather than the university's choice of selecting from among those students.

Q. So if you use the word comfortable in your deposition, the conclusion about the University of Mississippi is

that blacks are not – you know, they are uncomfortable; is that –

A. They are less likely to apply there, to that extent, uncomfortable is not a bad choice of words.

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[4311] Q. Okay. You don't have an analysis that's similar to what you did for historically white institutions for the traditionally black institutions?

A. That's correct.

Q. And you did do that in Alabama, isn't that right, and it showed the traditionally black institutions were extremely more heavily black than one would expect?

A. That's correct. And I would expect that here as well. I would have – you know, having looked at the numbers, I'm sure the same result would occur.

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TESTIMONY OF DR. MALVIN WILLIAMS

[4335] Q. Now, did the Board of Trustees provide additional funds to help address those weaknesses?

A. No, there were no additional funds provided for academic program review.

Q. How did you overcome those over weaknesses, starting with program one, please. Well, have those weaknesses been overcome?

A. As of now, we have removed all of the deficiencies of academic programs review.

Q. Okay. Starting under the first program, can you just briefly tell us how you were able to overcome that weakness?

A. It's hard to say it program by program.

Q. Okay.

[4336] A. I can try to generally describe for you.

Q. Okay. Fine.

A. We tried to look at – most of the program deficiencies included summary of things like library holdings, instructional equipment, additional faculty. Those were – computer equipment – those were probably the three major concerns.

What we really had to do was not do some other things. For example, we had some priorities set in trying to upgrade science laboratories for which we have just not been able to do. We had to buy – for example, agriculture was listed as having deficiencies in library volumes. Some of the other programs, for example, like biology might not have shown deficiencies. We had to, in essence, not do some things we would have ordinarily have done to try to correct the deficiencies of our program review.

The main thrust of how that really will effect us is really – won't be known until we go through another Southern Association Review or another NCATE review because we had to not do some things a couple of years that we would normally try to do in order to correct the weaknesses of programs review.

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[4338] Q. Well, Doctor, did the program help – did the program review process help or hurt Alcorn?

A. Well –

Q. And, if so, explain to the Court.

A. That's – that's kind of – that's kind of difficult to answer. I can only answer that by probably saying it probably helped those programs for which marginal ratings were made.

On the other had, I'm not sure of what effect it's going to have on some of the other programs because of the way we had to go about trying to meet the recommendations of the weaknesses of the marginal programs. But there are some instances that some of the programs that we strengthened

you could say that it helped some of theose, but the overall effect of review, I don't think will be determined for Alcorn until we go through another complete review cycle of Southern Association [4339] and some of the other professional accreditations that we have.

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[4342] **TESTIMONY OF DR. NATHANIEL BOCLAIR**

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Q. You may refer to that. There is a—could you—could you tell the Court how many programs were listed as marginal at Mississippi Valley State University, the highest number during the process of programs review.

A. I believe there were nine programs essentially that we had to deal with as being marginal. It is somewhat difficult to speak—

Q. Could you name them, please?

A. Name the programs?

Q. Yes.

A. Okay. We had a bachelor of arts program in speech that was classified as marginal, a criminal justice Program that was classified as marginal, elementary education at the bachelor's level and also at the master's level, computer [4343] science, biology, industrial technology and I believe those are all.

Q. There's more than eight, is it not true. Is it not true that—

A. Uh—

Q. Is it not true that—strike that. There's a column labeled weaknesses in your notebook. Could you tell the Court what that means?

A. The column labeled weaknesses are those deficiencies as cited by the consultant and the Board Staff that Mississippi Valley State University should address and rectify before the program could receive approval.

Q. And could you tell the Court, what was the cause of Mississippi Valley State having the marginal program as classified?

A. There were several categories, and I will just list those by category rather than by program.

Q. Sure.

A. Among the categories listed was in some instances the facilities needed improvement; In some instances, the faculty load was too great; the faculty qualifications were not what the consultant considered that they should have been. Faculty salaries were too low, academic support and equipment were not found to be adequate to support, library holdings were inadequate, and there was some curriculum inadequacies [4344] also.

Q. Did the Board of Trustees provide additional funds to help address these weaknesses?

A. No, they did not.

Q. Did they – could you tell us just how – well, could you tell the Court how many of the marginal programs – how many, if any, of the marginal programs have been reclassified?

A. All of them have been reclassified as approved.

Q. Okay. Now, could you tell the Court how you – how you were able to do that without additional funds?

A. Well, what we had to do was to prioritize and put some things off that needed doing in order to do this. For example, if one program had a progress report due in May of this year and another program was due in a subsequent year, we would try to address the needs for that program this year, and then the next year, we would try to place the other program on a priority. But we had to neglect such items as faculty salaries, and the record clearly indicates, we are negligent in that particular respect.

And we had to put our building repairs off and we were able to use federal funds from a Title III Grant in order to rectify some of the inadequacies that were there.

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TESTIMONY OF ARTHUR PEOPLES, JR.

[4362] THE WITNESS: My name is Arthur Peoples, Jr.

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Q. Dr. Peoples, would you please state your formal educational background and training.

A. Well, I'm a native of Starkville. I finished high school in Starkville, Mississippi. I went to Jackson State University for a bachelor of Science degree. I have a Masters and PhD degree from the University of Chicago.

Q. Okay. And, Dr. Peoples, would you please state beginning with your most recent occupation and move sequentially backwards, please give your history of employment.

A. I spent two and a heal years in the United States Marine Corps. After I left Jackson State and received my Masters degree, I became a teacher in the Gary, Indiana Public School System, in which I became a Principal of a school there. I [4363] left Gary in 1964 and came back to Mississippi, going to Jackson State University as assistant to the president. I received a post-doctoral fellowship at the State University of New York at Binghamton, served as assistant to the president, went back—came back to Jackson State in 1966, became vice president. In 1967, I became president of Jackson State, a post I held until May of 1984. Subsequent to that, I became a distinguished professor at the University Center in Jackson, a post I held until I retired in November of 1985.

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[4368] Q. Would you please explain to the Court what is the defenition of marginal?

A. That means that the program has several deficiencies in terms of, perhaps, insufficient numbers of teachers or insufficient numbers of students or insufficient equipment or inadequate curriculum. These were the types of judgments that were used, types of factors used to come around with the marginal grading.

Q. Were you provided—would you please explain to the Court what, if any, resources did you receive from the Board of Trustees or the Board staff in order to bring the program from a marginal status to an approval status?

A. We did not receive any above the ordinary formula support from the Board in this respect. What you were—what we would get would be the normal allocation based upon the formula, which were SCH produced the previous year, multiplied times the appropriate factors. But so far as extra funds to bring these programs up to par, we received none. What we [4369] had to do was to—well, we had to take from other areas, which caused them to be deficient, in order to bring these up to par and not lose that particular course of study.

Q. Dr. Peoples, are you familiar with the mission statement adopted by the Board of Trustees in 1980?

A. Yes, in a general sense, I am.

Q. Please explain to the Court, what was the mission of Jackson State University under that mission statement.

MR. STEPHENSON: To which we object, Your Honor. Again that's not proper rebuttal. The mission have been an issue ever since the commencement of the litigation.

MR. YOUNG: Your Honor, if he says he's familiar with it, I'll go on.

THE COURT: Well, the record's clear, it's an urban university. You may go on.

MR. YOUNG: Thank you, Your Honor.

MR. YOUNG: (Continuing)

Q. Dr. Peoples, would you please explain to the Court what, if any, influence you had in the Board adopting that mission for Jackson State University.

MR. STEPHENSON: Same objection, Your Honor.

MR. YOUNG: Your Honor, I don't believe that was in the record. As a mater of fact, Your Honor, I think –

THE COURT: Is there any testimony by the defendants that they – that nothing was done by Jackson State? Is this

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[4371] THE COURT REPORTER: "Please explain to the Court what was the mission statement of Jackson State University under the mission statement."

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A. Yes, I did. As a matter of fact, before the Board [4372] promulgated its mission statements, we went to the Board of Trustees and petitioned that Jackson State be given the mission of urban university based upon our information that the federal government was about to pass legislation which would establish in each state an urban grant college, and we wanted to be sure we were that urban grant college so that we could – would be able to receive federal money to carry out research to solve urban problems.

We went so far as to propose to the Board how this would help Jackson State to be of more service to the State.

Now later on, about the – I guess two or three years later, when the Board established its mission, it complied to some extent with our pequest. We had requested, when we went before the Board, the sever degrees, that is academic programs, be a part of the urban mission.

In particular, we wanted to have in our School of Education, degrees which would training principals and

teachers to be able to sove, that is, to teach in problematic urban situations.

We also felt that social work should be a part of Jackson State's mission since we were a natural laboratory int he big city of Jackson. We also felt that Jackson State should be given the lead in communications because we had the three major networks there in Jackson and Jackson State already had a radio station.

[4373] So we did provide input to the Board, however, we were chagrined when we received just the designation urban with no – not what we had asked for.

Q. Dr. Peoples, what programs did you receive in order to meet you mission?

A. We didn't receive any program. We were told, if we came before them and requested programs, they would give it consideration.

Q. Did you –

A. But we never did receive any of those degrees that we were asking for.

Q. You said you were told if you brought any programs before them, they would give them consideration?

A. Right.

Q. Did you bring any programs before them for consideration?

A. Yes.

Q. Would you name the programs and when did you bring them, as best you can.

A. I don't recall the specific dates, but we did ask for the program in the teaching supervision and administration of urban situated schools for the Doctor of Education degree in that area. We also asked for the Masters and PhD degrees in mass communications. And we asked for the Masters degree in social work.

Q. Dr. Peoples, did Jackson State University devise or

create [4374] any programs which were considered unique in the State of Mississippi.

A. Yes.

Q. Would you please name those programs.

A. Well, the one outstanding program was the one in meteorology that we established at Jackson State.

Q. And was that program funded by the Board of Trustees?

A. Indirectly – well, it was funded in terms of the formula, which is more or less enrollment and SCH driven and this was a low enrollment – highly technical program we got very little funds. It was really established more by help from the National Weather Service, which is called, NOAA, the National and Atmospheric Administration. They provided for us two professors who would be receiving directly from NOAA about fifty thousand dollars apiece, and we also worked with the local weather service at the airport. They provided us adjunct professors. So we got off the ground for the first four uears with help from the National Weather Service and the local weather service at the airport.

From the trustees, we received the normal formulated allocation, which is based upon the enrollment, and since this was a new program with very low enrollment initially, we didn't receive very much help. The weather service thought we were going to eventually be taken over and supported in this program by the Board of Trustees. [4375] I did petition the Board to include our meteorology program as one of the centers of excellence and thus get a supplementary, that is, extra funding from the State legislature the same as was received by Ole Miss, State and Southern in their centers of excellence, but the Board did not see fit to submit that to the legislature.

Q. Did you program – is the program still – explain to the Court, Dr. Peoples, how long did NOAA, the Na-

tional Oceanic Agency continue to fund the meteorology program?

A. This went of for about a four uear period. I don't know what's going on now, but I do know that those professor's salaries, they gradually reduced the salaries, their part of the salary. At first, they paid the whole amount, and then they got down to three-fourths, down to half and so on, and we had to pick up these salaries as they phased themselves out of it, and with the expectations that they had that this would be picked up by the Board of Trustees. We did pick it so far as we could, but we were not setting any extra money. It was a law enrollment couse.

But the point I'm making, I was trying my best to keep this unique program as one means of attracting other race students to Jackson State, and I was hoping to get extra funding from the Board above and beyond the formula through the centers of excellence programs. We were not successful.

Q. Dr. Peoples, you mentioned the center of excellence. [4376] What, if any, other programs did you prepare did you propose to the Board to be place under the Center of Excellence?

A. Well, we felt that our urban mission should afford for us research capability. So through the MUD Foundation, we received a three-year grant to establish an urban research center. This was a three-year grant. Now, as this grant was being phased out, I petitioned the Board to include, as an extra appropriation, whether it be centers of excellence or an extra appropriation funding for our urban research center and the grant ran out and I never got the extra funding.

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[4381] Q. Dr. Peoples, I believe you have been, you were president of Jackson State University from 1967 through 1984?

A. Yes, I was.

[4382] Q. And isn't it true, sir, that during your tenure that Jackson State University experienced growth unparalleled by any other period in its history?

A. Yes, sir.

Q. And isn't it also true, sir, that during this period that there was an increase in the size and quality of the faculty and administration?

A. Yes, there was.

Q. And isn't it true, sir, that the student enrollment more than tripled during this period?

A. Yes.

Q. And isn't it also true, Dr. Peoples that academic programs were established in multiple proportions in new fields such as industrial technology, computer science, mass communications and meteorology?

A. Yes.

Q. And isn't it also true, sir, that five schools were established during this period, that is, the school of business and economics, the school of education, the school of liberal studies, the school of science and technology and the graduate school?

A. Yes.

Q. And isn't it also true, sir, that during this period, the graduate school grew from a single master's in school administration to thirty-five master's, fifteen specialist's and a [4383] doctorate in early childhood education?

A. Yes.

Q. And isn't it also true, sir, that during this period accreditations grew from regional accreditation by the Southern Association of Colleges and Schools to some several national accreditations by other organizations?

A. Yes.

Q. And isn't it true, sir, that these accreditations, these national accreditations included accreditations by the Na-

tional Council for Accreditation of Teacher Education, the National Association of Industrial Technology, the Council on Rehabilitation Education, the American Chemical Society, the Council on Social Work Education, the National Association of Schools of Art Design, the National Association of Schools of Music and the National Association of Schools of Public Affairs and Administration?

A. Yes.

Q. And isn't it also true, Dr. Peoples, that during this period, the University experienced monumental physical expansion?

A. It received quite a bit of expansion. Monumental, I don't know, but it was quite a bit.

Q. I'm reading from your vitae, Dr. Peoples.

A. I thought that sounded quite familiar. I thought I had seen that before.

[4384] Q. Would you agree, please, sir, against that that University experienced monumental physical expense?

A. Yes.

Q. As a matter of fact, total construction was approximately twenty-seven million dollars, was it not?

A. Yes.

* * * * *

OFFERS OF PROOF

[2899] Dr. Erie Jean Bowen: Former Director of Student Services and Affirmative Action at the University of Mississippi.

* * * * *

[2901] She would testify that the Chairman of the Search Committee and/or Committee Member – Law School Faculty Member – yes – got up and stated, "We only have several hours to select a new dean and we have three

finalists. I know that Dr. Louis Westerfield has been endorsed by the law students at the law school; however, we only have several hours, and I suggest that we exclude discussion on Dr. Westerfield because he will not be Dean. We need to spend – We need to spend our time on persons who have a real good change of becoming dean. The law school is not ready for a black dean, so I suggest that we discuss the qualifications [2902] of the two white finalists."

No real discussion occurred with respect to Dr. Westerfield's qualifications for Dean. At the end of the meeting, all committee persons were warned that no mention of what had taken place should be taken out of the room, because if this information was discussed – If this information was disclosed, the university would be in trouble.

* * * * *

[2906] May it please the Court, Ms. Linda Redmond, offer of proof:

Ms. Linda Redmond's offer of proof would be that she was employed by the University of Mississippi during 1983, 1985 period, and that her major area was in education of the handicapped.

That she had worked several – She had worked several years to obtain a grant to do Outreach Services at the University of Mississippi.

That finally when her proposal – And she had been promised the directorship of the project.

Finally, her proposal was funded, and once her proposal was funded, they gave the directorship of the project to a white male.

That because of that and other practices that she found offensive, she left the University of Mississippi.

May it please the Court, we offer as proof of Dr. Williams his deposition taken June the 22nd, 1980, at the

University of Mississippi, and we also offer the deposition that was taken on November the 14th, 1986.

May it please the Court.

(Documents passed.)

MR. CHAMBLISS: We also in summary –

THE CLERK: Have these depositions already been filed with the Clerk's Office? I think they have?

MR. CHAMBLISS: The 19 – May it please the Court, the 1980 deposition is on file. That is one of the housekeeping matters we have to deal with. I am not sure whether the 1987 is. I would think not. But the – The 1986 deposition is not, but that is one of the things we intend to do before the trial is over, enter all of the depositions into the record.

THE CLERK: The reason I was asking, I did not think this later one was. I would like to mark it as an exhibit – Plaintiffs' Exhibit Number 365, the 1986 deposition of Lucius Williams.

* * * * *

[2914] A requirement that blacks serve on each such committee established at the recommendation of the Black Student Concern Committee was in effect at least until 1984, but a shortage of black faculty made it impossible to put black students on all such committees.

Now blacks do not serve on each Search Committee. The requirement that a black should serve on every committee has now been modified to state that a black should serve where possible.

Search Committees may have a black graduate student. He remembered only three black faculty members in 1975 when he came to the University of Mississippi.

* * * * *

He assumed the Affirmative Action Officer role about

1983. There is a – There is a thirty percent turnover rate in faculty.

There is about ninety positions or more and his calculations were thirty percent of three hundred – Using three hundred and fifty-five.

Dr. Williams has to sign-off approximately one hundred and eight [2915] times a school year. He has refused to sign-off on occasion where white applicants who had less qualifications were favored over black applicants with more qualifications.

Nevertheless, each time he refused to sign-off on an applicant, the white applicant was hired anyway.

* * * * *

On the Search Committee for the Law School Dean were three blacks, Dr. Lucius Williams, Erie Jean Bowen and Bobby Harges.

Were there – That is H A R G E S, a law student. There were three finalists among – which one was black, Louis Westerfield.

At the beginning of the meeting of the subcommittee, the following statement – the following was stated: "that the committee only had a short time in which to make a serious decision among the candidates, and the committee time would be best served by concentrating on the two white candidates."

It was stated that the University of Mississippi was not ready for a black Law Dean, and that discussions on candidates who had a chance [2916] for being on it.

Dr. Williams, if allowed to testify, would testify that Dr. Marks, the Academic Dean, on many occasions stated to him that he did not believe in Affirmative Action and that blacks wanted a free ride.

That as long as he was responsible for hiring and firing at the University of Mississippi, that there would be no affirmative action taken.

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[2922] MR. CHAMBLISS: Thank you, Your Honor. Okay. In addition to what I have proposed to the Court on Dr. Peoples, and I think it is in addition to, Your Honor, Dr. Peoples if he were allowed to testify, he would, in essence say—testify that over the years, that programs have been deprived—that the College Board has deprived black schools of programs that could attract other race students.

* * * * *

[2923] With respect to his further testimony was that black—historically black institutions were, in fact, a sideline action and that the major programs were, in all instances, given to white schools.

He would testify that the—this was true in the beginning when black schools had what you call special education committees to only deal with the black schools and the black presidents could not appear before the College Board until the present where you are able to appear, but really don't have no real influence on decision-making, because even you were to vote on things you could not have the numbers to have your will be done.

* * * * *

[2929] And that to date, the blacks have never gotten their first choice in terms of blacks who are independent. And he stated that they had nothing to do with Dr. Harrison, who was independent. He was a dentist.

With respect to governors, as a government William Winter was asked to appoint a black or a lawyer or somebody who was independent, and Governor Winter just stated he didn't see no reason why there should be a lawyer or anybody independent, that he saw all people as being equal and that he basically said that he was not going to

listen to any of the black concerns with respect to appointing somebody to governors.

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DISTRICT COURT JUDGMENT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

NO. GC75-9-NB
(Senior Colleges)

JAKE AYERS, SR., ET AL., PLAINTIFFS

UNITED STATES OF AMERICA, PLAINTIFF-INTERVENOR

v.

WILLIAM ALLAIN, GOVERNOR, STATE OF MISSISSIPPI; W. RAY CLEERE, COMMISSIONER OF HIGHER EDUCATION; BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING, BETTY A. WILLIAMS, PRESIDENT, THOMAS D. BOURDEAUX, VICE PRESIDENT, WILLIAM H. AUSTIN, JR., FRANK O. CROSTHWAIT, JR., BRYCE GRIFFIS, WILL A. HICKMAN, CHARLES C. JACOBS, JR., WILLIAM M. JONES, JOHN R. LOVELACE, M.D., DIANE MILLER, DENTON ROGERS, JR., SIDNEY L. RUSHING, GEORGE T. WATSON, MEMBERS; DELTA STATE UNIVERSITY, KENT WYATT, PRESIDENT; MISSISSIPPI STATE UNIVERSITY, DONALD W. ZACHARIAS, PRESIDENT; MISSISSIPPI UNIVERSITY FOR WOMEN, JAMES W. STROBEL, PRESIDENT; UNIVERSITY OF MISSISSIPPI, R. GERALD TURNER, CHANCELLOR; UNIVERSITY OF SOUTHERN MISSISSIPPI, AUBREY K. LUCAS, PRESIDENT; ET AL., DEFENDENDANTS

JUDGMENT

In accordance with a memorandum opinion issued this day in the above styled and numbered cause, it is hereby ORDERED AND ADJUDGED:

That the claims of the plaintiff class and class representatives be, and are hereby, DISMISSED;

That the claims of the United States of America be, and are hereby, DISMISSED; and

That the above styled and numbered cause be, and is hereby, DISMISSED.

THIS, the 10th day of December, 1987.

/s/ Neal B. Biggers, Jr.

NEAL B. BIGGERS, JR.
United States District Judge

ORDER GRANTING CERTIORARI

In the Supreme Court of the United States

No. 90-1205

UNITED STATES, PETITIONER

RAY MAYBUS, GOVERNOR OF MISSISSIPPI, ET AL.

ORDER ALLOWING CERTIORARI. Filed april 15, 1991.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted. This case is consolidated with 90-6588, *Jake Ayers, et al. v. Ray Mabus, Governor of Mississippi, et al.* and a total of one hour is allotted for oral argument.

April 15, 1991

ORDER GRANTING CERTIORARI

In the Supreme Court of the United States

No. 90-6588

JAKE AYERS, SR., ET AL., PETITIONERS

v.

RAY MAYBUS, GOVERNOR OF MISSISSIPPI, ET AL.

ON PETITION FOR WRIT OF CERTIORARI to the United States Court of Appeals for the Fifth Circuit.

ON CONSIDERATION of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted limited to Questions 1 and 2 presented by the petition. This case is consolidated with 90-1205, *United States v. Ray Mabus, Governor of Mississippi, et al.* and a total of one hour is allotted for oral argument.

April 15, 1991